

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RUDY CARMONA,)
)
Plaintiff,)
)
VS.) CASE NO.: 4:21-CV-01473
)
KILGORE INDUSTRIES,)
)
Defendant.)

ORAL DEPOSITION OF
RUDY SAM CARMONA
APRIL 8, 2022

ORAL DEPOSITION OF RUDY SAM CARMONA, produced as a witness at the instance of the DEFENDANT, and duly sworn, was taken in the above-styled and numbered cause on April 8, 2022, from 8:41 a.m. to 1:32 p.m., before Lisa M. Durham, CSR in and for the State of Texas, reported by machine shorthand, at the location of the witness, City of Porter, County of Montgomery, State of Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Job No. CS5149584

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PROCEEDINGS

(April 8, 2022, 8:41 a.m.)

RUDY SAM CARMONA,

having been first duly sworn, testified as follows:

EXAMINATION

BY MS. ALFARO:

Q. Good morning, Mr. Carmona. How are you?

A. Good.

Q. So let me start by asking you, have you been
deposed before?

A. No, ma'am.

Q. So let's talk a little bit about that before we
jump right into the deposition. And just for the
purposes of the record, can you state again your full
name, please?

A. Rudy Sam Carmona, Junior.

Q. And your official first name is Rudy? That's
not a nickname?

A. Yes, it's Rudy.

Q. Okay. Thank you. Well, let me explain what's
going to happen today virtually. I'm going to be asking
you some questions. I am legal counsel for the
defendant, Kilgore, in this matter, and based on the
allegations that you've made in the complaint, I'm
going to be asking you some questions that I need for

1 you to respond.

2 Now, most important thing is, if you don't
3 understand or can't hear one of my questions, please let
4 me know. Number two, since this is all happening
5 virtually, I need to know whether there is somebody in
6 the room with you or not at this time.

7 A. No.

8 Q. Okay. And the reason I'm asking is when you
9 move around, I see somebody in the back of you. So I
10 don't know what's going on.

11 A. What do you mean when I move around? I'm in my
12 office.

13 Q. Okay. Now, because we're doing this virtually,
14 there is potential, as you saw at the beginning, for
15 some things in the internet and the connection to go a
16 little bit wrong, and that means I might not be able to
17 listen to what you're saying, or vice versa, or we may
18 freeze up.

19 If anything of that nature happens on your
20 end, please let me know because there's no way for me to
21 know other than I see you frozen or whatnot. But again,
22 if you don't tell me that you haven't listened to or
23 weren't able to listen to or weren't able to grasp my
24 question, I'm going to understand that you're responding
25 to my questions as asked. Okay?

1 A. Okay.

2 Q. If you need a break at any point in time,
3 that's okay. Just let me know. The only thing is, if I
4 have posed a question, I'm going to require that you
5 respond to that question before we go on a break. Okay?

6 A. Okay.

7 Q. As of right now, any questions that you have
8 regarding the proceedings?

9 A. No.

10 Q. Okay. Then let's begin. I remind you that you
11 are under oath and you will remain under oath throughout
12 the duration of the deposition. Okay?

13 A. Okay.

14 Q. Are you taking any medication or have you taken
15 any medication today or anytime here today that would
16 not allow you to understand or respond to the questions
17 that I'll be posing for you?

18 A. No.

19 Q. I forgot to mention one more. During the
20 deposition, there is a court reporter, so everything
21 that you say and I say is being transcribed. From time
22 to time -- and it typically happens. It's very natural
23 and normal.

24 Throughout the deposition, there might be
25 points in time where you start using gestures, like

1 nodding your head and stuff like that or saying uh-huh
2 in order to respond to my questions. If that were to
3 happen, I'm going to do the signal for you so that you
4 know you need to verbalize the response in order to have
5 a complete transcript. Okay?

6 A. Okay.

7 Q. So tell me, what is your current address?

8 A. 25525 Ramrock Drive, Porter, Texas, 77365.

9 Q. Since when do you live in this address?

10 A. Since December -- I don't know the exact day.
11 Second week of December of 2020.

12 Q. Do you live there by yourself or with somebody
13 else?

14 A. With my wife and kids.

15 Q. What is your wife's name?

16 A. Jacqueline Nicole Carmona.

17 Q. And your kids, are they minors or are they --

18 A. Twelve, ten and four.

19 Q. Since when have you been married to Jacqueline?

20 A. April 5th of 2009.

21 Q. And all three kids that live with you are kids
22 between you and Jacqueline?

23 A. Yes.

24 Q. Prior to this marriage, have you ever been
25 married?

1 A. No.

2 Q. What is your date of birth?

3 A. 6/4/81.

4 Q. Where were you born?

5 A. Houston, Texas.

6 Q. And what would you say is your race?

7 A. Hispanic.

8 Q. Why do you claim your race is Hispanic?

9 A. My mother and father's heritage is from Mexico.

10 Q. Was your mother born in Mexico?

11 A. Yes.

12 Q. Was your father born in Mexico?

13 A. No. He was born here.

14 Q. Pursuant to your prior testimony, you were born
15 in the United States, correct?

16 A. Yes.

17 Q. Okay. Besides your three children, do you have
18 any other dependents?

19 A. Any other dependents?

20 Q. Yes, sir.

21 A. Currently, no.

22 Q. Let's talk about the preparation for this
23 deposition, but before we do, let me explain something
24 to you. I do not -- again, I repeat, I do not want to
25 know anything you spoke or discussed with your attorney

1 with regards to the questions I will be posing. Okay?

2 A. Okay.

3 Q. Did you prepare for this deposition?

4 A. Huh?

5 Q. Did you prepare for this deposition?

6 A. Did I prepare for this deposition? Yeah,
7 through prayer.

8 Q. Did you review any documents in preparation for
9 this deposition?

10 A. No.

11 Q. Did you talk to anybody besides your attorney
12 in preparation for this deposition?

13 A. Yes, my wife.

14 Q. What did you speak with your wife?

15 A. How she's been -- she's had a deposition
16 before, so I wanted to know how some of the questions
17 might be.

18 Q. Did you talk to anybody else with regards to
19 this deposition?

20 A. No.

21 Q. With regards to your job at Kilgore, do you
22 keep or kept any journals, notebooks, notes with regards
23 to your allegations or your employment with them?

24 A. Notebooks? Any notebooks, no.

25 Q. Let me be clear. Notebooks, journals, notes,

1 any of those things?

2 A. No. There was no notebooks handed out by
3 Kilgore that I kept.

4 Q. Okay. So again, I'm going to be clear. They
5 don't necessarily have to be notebooks handed out by
6 Kilgore. They could be journals or notes that you took
7 with regards to your employment with them. Do you have
8 any of that?

9 A. Any notes? Any notes that were mine were mine.
10 Any notes that were Kilgore's were Kilgore's.

11 Q. I understand that. But my question is, did you
12 keep any sort of notes, journals, notebooks with regards
13 to your employment at Kilgore?

14 A. No. Anything that was mine was mine. Anything
15 that was Kilgore's was Kilgore's. I did not keep any
16 special notes.

17 Q. And when I say keep, I mean -- because I want
18 to be clear amongst us -- any annotations, any notes,
19 any daily notes or kind of record that you kept with
20 regards to your employment with them, even if they were
21 yours.

22 A. I'm trying to remember any special notes that
23 were mine that pertained to work. I don't -- I don't
24 remember any special notes or notebooks or --

25 Q. Since your employment with Kilgore ended, have

1 you spoken with anybody in the company?

2 A. Have I spoken with anybody in the company?

3 Q. Meaning employed by the company or contracted
4 by the company.

5 A. No.

6 Q. Since your employment with the company ended,
7 have you spoken with any company, Kilgore company
8 clients?

9 A. Company Kilgore clients? I've spoken with my
10 clients.

11 Q. When you talk about your clients, those clients
12 would have been previous clients of Kilgore?

13 A. Yes.

14 Q. Okay. Who would those be?

15 A. Those clients are my clients.

16 Q. I understand, sir. What are their names?

17 A. Halliburton, FMC.

18 Q. Who in Halliburton did you speak with?

19 A. Do I speak with that are my clients?

20 Q. Yes, sir.

21 A. These are the site managers to the locations
22 that I deal with.

23 Q. What are their names?

24 A. I'm trying to understand why you need their
25 names.

1 Q. Sir, I'm here to ask you questions, and you're
2 here to respond to them. So what are their names?

3 A. James Workman.

4 Q. Can you repeat that last name again, please?

5 A. James Workman.

6 Q. Can you spell that last name?

7 A. W-o -- W-o-r-k-m-a-n.

8 Q. Who else?

9 A. Damon Benson (phonetic).

10 Q. Who else?

11 A. Alan -- Alan Vera.

12 Q. Who else?

13 A. Paul Woods.

14 Q. Paul who?

15 A. Paul Woods.

16 Q. Okay. Who else?

17 A. That's it from Halliburton.

18 Q. Okay. Any other client that was a previous
19 client of Kilgore that you speak with?

20 A. Yeah, the FMC.

21 Q. And who at FMC do you speak with or have spoken
22 with since you ended your relationship with Kilgore?

23 A. Josh Bussleman.

24 Q. Anybody else?

25 A. That's it.

1 Q. Now, with regards to Josh, have you spoken with
2 him anything regarding this complaint that you have
3 filed against Kilgore?

4 A. This complaint?

5 Q. Yes, sir.

6 A. No.

7 Q. So if I were to call Josh, he would know
8 nothing about the fact that you filed a complaint
9 against Kilgore?

10 A. If you was to call Josh? Not about the
11 complaint, but he knows that -- about the project that
12 ended right around the time I was let go.

13 Q. Okay. What does he know about that project?
14 First and foremost, what's the project's name or how is
15 it identified?

16 A. Air rotation units.

17 Q. And those air -- that air rotation unit project
18 would be at FMC?

19 A. Yes. The only --

20 Q. I'm sorry. Go ahead.

21 A. The only reason why he would know is because I
22 was about 99 percent done when I was let go. So he was
23 very -- he was very adamant to try to find out what
24 happened to me.

25 Q. Okay.

1 A. Because I was the main -- I was the project
2 manager.

3 Q. Let's take this step-by-step. There's no
4 question on the table.

5 So you were still working for Kilgore while
6 doing this air rotation units project, correct?

7 A. Yes.

8 Q. And your conversations with Josh about this
9 project happened during the time you were employed by
10 Kilgore, after or both?

11 A. Say it again.

12 Q. The conversations you had with Josh Bussleman
13 were during the time you were employed by Kilgore, after
14 your relationship -- employment relationship with
15 Kilgore ended or during, both?

16 A. No, after he called me and I said they let me
17 go so I'm no longer available for that project.

18 Q. Okay. Let's talk a little bit about that. Did
19 Josh have your cell phone number?

20 A. Yes. He had both my numbers.

21 Q. Okay. And you stated just a minute ago that he
22 called you after you were terminated from Kilgore?

23 A. Yes.

24 Q. Okay. And do you recall when exactly after
25 your termination he called you?

1 A. I don't. I mean, it was days after.

2 Q. When he called you, what's your best
3 recollection of what he told you?

4 A. What happened? I said, well, they just let me
5 go. I didn't tell him the details, but he was obviously
6 trying to figure out what happened.

7 Q. Did he say anything else to you?

8 A. No, just what happened. I said, well, I can't
9 explain it right now. Obviously, I didn't hire Kennard
10 Law until maybe months later, so there was no legal
11 stuff to talk about.

12 Q. Any other conversations you had with Josh with
13 regards to your employment at Kilgore?

14 A. Say it again.

15 Q. Any other conversations you might have had with
16 Josh regarding your employment at Kilgore, even if it --
17 if they were after your termination?

18 A. No. It's just I was no longer available for
19 the project.

20 Q. Now, you work -- you stated FMC is a client of
21 yours currently?

22 A. Not officially. I've quoted, but I have not --
23 I have not been rewarded any projects. So not
24 officially.

25 Q. Have you done any work for them after your

1 termination from Kilgore unofficially?

2 A. Have I done any unofficial, no.

3 Q. How many quotes have you provided them?

4 A. Maybe three.

5 Q. Were these projects different to the ones you
6 worked for at Kilgore?

7 A. Yes.

8 Q. You also stated that you had spoken with
9 Halliburton, and apparently, they were clients of
10 Kilgore when you worked with Kilgore?

11 A. I can say that they were clients of Kilgore and
12 Rudy Carmona.

13 Q. Okay. When you say they were clients of
14 Rudy Carmona, that means that you worked for Halliburton
15 while employed for Kilgore?

16 A. No. It means I went and got these clients.

17 Q. And you got these clients in representation of
18 Kilgore, as -- working as a salesperson for Kilgore?

19 A. Yes.

20 Q. Okay. My original question, if you recall, was
21 if you had conversations after termination with anybody
22 from Kilgore. And one of the persons that you mentioned
23 or companies was Halliburton, and you mentioned four
24 site managers. Do you currently do work for this
25 company?

1 A. Yes.

2 Q. Okay. Since when do you do work for this
3 company?

4 A. March of -- March of '21, yeah.

5 Q. And for the record, when was your last date of
6 work with Kilgore?

7 A. October 26, 2020.

8 Q. And how did you land working for Halliburton
9 after March 2021?

10 A. Relationships I'd built for nine years.

11 Q. Did you call them and ask if they -- if they
12 needed help? How did that happen?

13 A. Well, they had -- they were aware that I was no
14 longer at Kilgore. So, yes, they reached out.

15 Q. They reached out to you, or you reached out to
16 them?

17 A. I guess you could say it was both because I
18 reached out to them, but there was -- they were very
19 well aware.

20 Q. My question is simple. Who reached out to who
21 first? Did you reach out to Halliburton, or did
22 Halliburton reach out to you?

23 A. I guess -- I guess it was both because at the
24 moment I was terminated, it was over. I was getting
25 POs for Halliburton project, so they knew. They knew at

1 the moment.

2 Q. Sir, my question is simple. I'm going to
3 repeat it again. Who initiated the contact? Did
4 Halliburton contact you first --

5 A. I guess I can say they did.

6 Q. Let me finish my question. Let me finish my
7 question.

8 A. Well, there's no need to yell. So they did.

9 Q. I'm not yelling, sir, and as a matter of fact,
10 I'm not even in your same mode. Okay?

11 A. Well, they did.

12 Q. Listen to --

13 MR. HODGES: Mr. Carmona, you need to let
14 her just ask her question and just -- you know, just
15 answer the question when she asks -- after she asks,
16 please. Just -- you know, we can just keep it as
17 cordial as possible going through this process. Thank
18 you.

19 THE WITNESS: Okay.

20 Q. (BY MS. ALFARO) The question is, who contacted
21 who first, and that's the only --

22 A. They did.

23 Q. Let me finish. Did Halliburton contact you or
24 you contact Halliburton?

25 A. They did.

1 Q. Okay. Who called you from Halliburton?

2 A. I think Damon did. It was over the lab project
3 because I was getting POs at the moment from the GC.

4 Q. You were getting POs from what?

5 A. The GC.

6 Q. And who was the GC?

7 A. The GC, D.E. Harvey.

8 Q. For Halliburton, did you ever work on a project
9 for them that you also worked while employed at Kilgore?

10 A. Repeat that again.

11 Q. Sure. Was there ever any project at
12 Halliburton that you worked while employed at Kilgore
13 and then while you were on your own?

14 A. No.

15 Q. Currently, are you self-employed?

16 A. Yes.

17 Q. What is the name of your company?

18 A. RSC Mechanical and Primary Auto Glass.

19 Q. Are these two separate companies?

20 A. Yes.

21 Q. Since when have you owned RSC Mechanical?

22 A. Since I left Kilgore.

23 Q. So your statement, testimony here today under
24 oath is that RSC Mechanical was opened by you after
25 October 26, 2020?

1 A. Well, the LegalZoom will show August of 2020,
2 but there was no -- no -- no projects that were done
3 after October 26th. And bank statements can prove that,
4 so --

5 Q. No projects done after October 26th by RSC
6 Mechanical?

7 A. Yes.

8 Q. So that means that -- strike that question.

9 Okay. So you've just testified that
10 RSC Mechanical was formally organized or opened in
11 August 2020. That's correct, right?

12 A. Yes.

13 Q. Who opened that company? Did you open it up?
14 Did you hire somebody to do that?

15 A. LegalZoom.

16 Q. And in August 2020, you were employed by
17 Kilgore, correct?

18 A. Yes.

19 Q. Okay. And RSC Mechanical, what was the purpose
20 of that company? What was its main line of business or
21 is its main line of business?

22 A. HVAC.

23 Q. And you say HVAC. Is that sales, repairs,
24 maintenance? What is it?

25 A. All that you listed.

1 Q. In August 2020, you've already stated you were
2 working at Kilgore. What was your position in August
3 2020 at Kilgore?

4 A. Service, sales estimator and project manager.

5 Q. Of what?

6 A. I was part of the service department.

7 Q. And what did you sell, estimate and all of that
8 at Kilgore? What type of service or product?

9 A. Oh, anything and everything that was related to
10 HVAC, electrical or plumbing.

11 Q. So the same thing that you did at Kilgore, you
12 were -- you would do for RSC Mechanical?

13 A. No. We do not do plumbing.

14 Q. Besides plumbing, everything else that you did
15 at Kilgore, you would do for RSC Mechanical?

16 A. There's some things that are limited, you know.
17 I'm not as big as Kilgore, so --

18 Q. Okay. So let's define this. What things does
19 RSC Mechanical do that you also did at Kilgore, while
20 employed at Kilgore?

21 A. Anything related to HVAC and light electrical
22 projects.

23 Q. And, then, on the counterpart of that, what
24 would you have done while employed at Kilgore that you
25 don't do at RSC Mechanical?

1 A. Just larger projects and plumbing at Kilgore.

2 Q. Okay. When did RSC Mechanical obtain its first
3 project?

4 A. Maybe a week or -- week or two after.

5 Q. After what?

6 A. After October 26th.

7 Q. When was the first time RSC Mechanical issued a
8 quote?

9 A. Maybe first week of October.

10 Q. And that would be first week of October 2020?

11 A. Uh-huh.

12 Q. Is that a yes?

13 A. Yes.

14 Q. During the first week of 2020, you were
15 employed at Kilgore, correct?

16 A. Uh-huh, yes.

17 Q. What was the first -- what company did you
18 issue that quote to?

19 A. Dresser-Rand.

20 Q. Can you repeat that, please?

21 A. Dresser-Rand.

22 Q. Besides this company, what other companies, if
23 any, did you issue a quote from RSC Mechanical while
24 still employed at Kilgore?

25 A. Uh-huh. Yes, ma'am.

1 Q. Okay. So you issued quotes to other companies
2 besides Dresser while still employed at Kilgore under
3 RSC Mechanical?

4 A. No. He was -- he's the one that was adamant
5 since August. He's one of the reasons why I started.
6 They asked me to take over the site, and I have text
7 messages from that customer.

8 Q. Okay. I'm going to request that you please
9 provide all of those text messages that you have to your
10 counsel and provide those to us. Okay?

11 A. Okay.

12 Q. And it is your testimony today under oath that
13 you still have those text messages, correct?

14 A. From Kevin, yes, him requesting since August
15 for me to provide him quotes from my newly formed
16 company.

17 Q. Now, how did Kevin know that you had formed the
18 company? You told him?

19 A. Yes. I told him and he was -- he was -- well,
20 let me rephrase that. He asked me to start my company
21 because they were tired of Kilgore's pricing. So
22 obviously, it took a while to form the LLC.

23 Q. Okay. So let's take this one step back. So
24 Kevin -- and the company, you said, was Dresser-Rand, if
25 I'm not mistaken?

1 A. Uh-huh.

2 Q. That was Kilgore clients, correct?

3 A. Uh-huh.

4 Q. Yes?

5 A. Yes.

6 Q. Okay. And while you were employed at Kilgore,
7 you're quoting a Kilgore client under RSC Mechanical,
8 correct?

9 A. At the request of the customer, yes.

10 Q. And you knew the pricing that Kilgore used,
11 correct?

12 A. Yes.

13 Q. And in that quote, taking advantage of knowing
14 the pricing for Kilgore, you quoted under Kilgore's
15 pricing, correct, for same services?

16 A. Yes.

17 Q. Did you obtain that job?

18 A. No.

19 Q. Why not?

20 A. Because I was let go, and, apparently, somebody
21 at Dresser-Rand did not want me to do the job even
22 though Kevin was requesting it.

23 Q. Okay. Let's talk a little bit about all this.
24 What's Kevin's position at Dresser, or was? I don't
25 know.

1 A. Well, when he was -- when he was there, he was
2 maintenance -- maintenance manager and some sort of
3 association with safety.

4 Q. What is Kevin's last name?

5 A. Kevin Midkiff (phonetic), Midkiff
6 (pronunciation). Yeah, I don't know how to spell that.

7 Q. And who told you that somebody at Dresser-Rand
8 did not want you working for them?

9 A. I was let go.

10 Q. Yes.

11 A. When I was --

12 Q. Who told you?

13 A. My boss when I was let go.

14 Q. And who are you referring to as your boss?

15 A. Paul Therriault. That was the reason why I was
16 let go, for that quote.

17 Q. So let's talk about that. So upon the time of
18 your termination at Kilgore, Kilgore told you that they
19 were terminating you because you had quoted a current
20 company employee on same services?

21 A. Yes.

22 Q. What was your response to that, if any?

23 A. There was no response.

24 Q. And you do admit that you quoted a Kilgore
25 client while still working for Kilgore under your own

1 company and under a lower quote with regards to --
2 correct?

3 A. I do, at the request of Kevin, yes.

4 Q. Irrespective of whose request it was, you do
5 admit to having done that, right?

6 A. Yes, at the request of the customer.

7 Q. Would you agree with me that there's a conflict
8 in your actions if you're still working for Kilgore and
9 you're trying to obtain their same job from their same
10 clients using information from the company that you
11 know?

12 A. No, because other Kilgore employees were doing
13 it and they were aware. So at the time, I didn't think
14 it was a conflict.

15 Q. Okay. I'm going to break this response in
16 parts. Let's forget about what others were doing. My
17 question is simple.

18 Do you think your actions, as a Kilgore
19 employee and as the owner of RSC, in the first week of
20 October 2021, conflict when you were quoting a Kilgore
21 client under the pricing that you knew Kilgore was
22 giving them while you were working for both entities,
23 for Kilgore and for RSC? Do you think there's a
24 conflict in that?

25 A. No, because according to management, there was

1 no conflict if they were allowing somebody else to do
2 it. So I didn't think at the moment it was a conflict.

3 Q. Prior to quoting Dresser, did you approach the
4 company and let them know that you were going to do
5 this?

6 A. Did I approach who?

7 Q. The company or your supervisor, Kilgore or the
8 supervisor, Paul, and let them --

9 A. No, no.

10 Q. So if there was no conflict, why wouldn't you
11 tell them beforehand that you were going to, quote, give
12 a better quote to Kilgore's client under your company?

13 A. Because other -- other management people were
14 doing it higher than me.

15 Q. Okay. So let's talk about that because you've
16 repeated that three times. What people -- what are the
17 names of these people that you're mentioning right now?

18 A. Thanm Han (phonetic), who was the service
19 manager, who was the right-hand to my boss as far as the
20 service department. Paul was aware.

21 Q. Okay. Anybody else, or would Thanm be the
22 person you're mentioning here?

23 A. No. That's the closest one I know.

24 Q. Okay. You say that's the closest one you know.
25 Is there anybody else you know that did this?

1 A. There are others, but I don't know their names.
2 They were in other departments.

3 Q. So with regards to Tom [sic], what was Tom's
4 position?

5 A. Service manager.

6 Q. Okay. And what was Tom's personal company?
7 What was the name of it?

8 A. NDH.

9 Q. N, as in Nancy, D, as in dog, H?

10 A. Yeah, Nancy David Henry.

11 Q. And what was this company -- what would this
12 company do?

13 A. HVAC.

14 Q. Are you sure of that? Are you a hundred
15 percent sure of that?

16 A. Of what?

17 Q. The fact that that company did HVAC.

18 A. Yes, 100 percent sure.

19 Q. And that company, NDH, went and quoted Kilgore
20 clients?

21 A. Yes.

22 Q. How do you know that?

23 A. Because I've spoken to Thanm.

24 Q. So you don't have personal knowledge of this.
25 You have knowledge because Tom told you?

1 A. I don't -- I don't have in my possession
2 pictures, but I was shown pictures and quotes.

3 Q. Okay. So you've spoken with Tom, correct?

4 A. Uh-huh.

5 Q. Verbal?

6 A. Yes, yes.

7 Q. And these conversations that you've had with
8 Tom, I'm assuming they happened while you were employed
9 at Kilgore, not after, correct?

10 A. Yes. They happened at Kilgore.

11 Q. And excuse me. What?

12 THE REPORTER: I think he's frozen.

13 MS. ALFARO: Yeah. He's frozen on my end.

14 A. You're breaking up.

15 Q. (BY MS. ALFARO) Yeah. You're frozen on our
16 side. Is that better?

17 A. Yeah. I can hear you now.

18 Q. Okay. So let's go back to my question. My
19 question was if your conversations -- I'm assuming your
20 conversations with Tom happened while you were employed
21 at Kilgore. Is that correct?

22 A. Yes.

23 Q. Have you had any conversations with Tom after
24 your employment with Kilgore ended?

25 A. Yes, but it pertained to projects.

1 Q. Is Tom working at Kilgore?

2 A. No.

3 Q. Since when doesn't -- does Tom not work at
4 Kilgore?

5 A. I think he left, my best recollection, July of
6 '20. That's the best I can try to remember.

7 Q. So Tom left Kilgore before you opened RSC?

8 A. Yes.

9 Q. Okay. Why did Tom leave?

10 A. To continue to pursue his own side, which
11 eventually turned into a full-time job. So this had
12 been going on for a year, and it had gotten so heated
13 because he was trying to do his service manager duties
14 while still trying to grow his side company, and Paul
15 was aware.

16 Q. What are the duties of a service manager at
17 Kilgore?

18 A. To maintain communication between vice
19 president, the techs, dispatch, the projects,
20 salespeople, to try to coordinate all service work
21 projects.

22 And my frustration was I knew he was out
23 and about growing his company and was making the Kilgore
24 department struggle, so I voiced this many times with my
25 boss. So I said, okay, so it's allowed then, I guess.

1 Q. So let me ask you this. As a salesperson that
2 you've indicated that you were at Kilgore, you have
3 direct contact with the clients, correct?

4 A. Yes.

5 Q. Did Paul have direct contact with the clients?
6 Because he was a service manager, not a salesperson,
7 right?

8 A. No. Paul was the vice president.

9 Q. So explain that to me again because you told me
10 he was a service manager. What was Paul --

11 A. No. Thanm, T-h-a-n-m, Thanm.

12 Q. Okay. So Thanm and Tom are two different
13 people we're talking about?

14 A. No. It's the same one. I'm talking about Paul
15 and Thanm.

16 Q. Okay. So Paul is the service manager?

17 A. No. Paul is the vice president.

18 Q. Okay. So going back to Thanm, going back to
19 the person that you've testified had his own company,
20 this person's position was what?

21 A. Service manager.

22 Q. As a service manager, did he have direct
23 contact with the client in his employment at Kilgore?

24 A. Yes.

25 Q. You doubted that. You had to think about

1 that. Why?

2 A. No. It's because I thought you were asking
3 about Paul.

4 Q. And, then, how does a service manager have
5 direct contact with the clients? Because based on your
6 prior testimony, all he does is coordinate employees
7 within the company.

8 A. No. He would -- he mostly had direct contact
9 when there was an issue. So he would have to step in
10 and -- on the technician's behalf. So then he would get
11 direct contact.

12 Q. And just to be clear, you never worked for
13 Thanm. You never did work for Thanm's company, right?

14 A. No. I formed another company.

15 Q. And any and all knowledge you claim to have
16 with regards to Thanm's own company was based on what
17 Thanm told you, correct?

18 A. At -- yes, told me and showed me.

19 Q. But you never had personal knowledge. You
20 never saw his onsite work? You never saw his clients
21 personally, right?

22 A. I did. He showed me quotes and pictures.

23 Q. But again --

24 A. From -- from --

25 Q. Let me -- there's no question. Give me one

1 second.

2 Therefore, all the information you have
3 regarding Thanm's company was provided to you by Thanm?

4 A. Yes.

5 Q. Okay. And, then, you testified that Thanm left
6 in July 2020, correct?

7 A. Yes.

8 Q. Okay.

9 A. To the best of my knowledge.

10 Q. Going back to your termination and your
11 testimony about the termination, let's talk a little bit
12 about the day of your termination. When were you
13 terminated?

14 A. October 26, 2020.

15 Q. Okay. And how did you learn of your
16 termination?

17 A. I was called into the office by my boss.

18 Q. And you've already told us that your boss was
19 Paul, right?

20 A. Yes.

21 Q. What is Paul's last name?

22 A. Therriault. T-h-e-r-r-i-a-u-l-t, I think.

23 Q. What was Paul's position in the company?

24 A. Vice president of the service department.

25 Q. And let me ask you another question. When were

1 you hired by Kilgore?

2 A. March 18, 2013.

3 Q. What was your position upon hiring?

4 A. Service sales.

5 Q. At the time of your termination, was your
6 position the same as at the time of your hiring?

7 A. No. It kind of changed.

8 Q. Okay. How did it change?

9 A. They realized my vast experience, so they
10 allowed me to project manage and estimate.

11 Q. Let's go at it another way. At the time of
12 your hiring, what was the title you had at the company?

13 A. Service sales.

14 Q. And at the time of your termination, what was
15 the title that you had at the company?

16 A. I guess technically, it was still service
17 sales, but I did other duties.

18 Q. Who hired you?

19 A. Paul Therriault.

20 Q. At any time during the hiring process, did you
21 let Paul know what your race was, or did he know?

22 A. I'm pretty sure he knew.

23 Q. Let's talk a little bit about hiring here. So
24 were you interviewing for the position of service sales
25 at Kilgore?

1 A. Yes.

2 Q. Okay. And who interviewed you?

3 A. Paul and Jeff Kilgore.

4 Q. How many interviews, one?

5 A. Yeah, just one.

6 Q. How did you learn you were hired?

7 A. I think he called me a week and a half later
8 after all background and drug tests was complete.

9 Q. When you say he called you, would that be Paul?

10 A. Paul, yes.

11 Q. And throughout your employment at Kilgore since
12 hiring, was Paul always your supervisor?

13 A. Yes, but sometimes ownership would interact
14 with me in some aspects because I was -- I was
15 different. I did many, many projects that were not
16 really associated with just service.

17 Q. Would you say -- would it be correct to say
18 that your direct report was Paul?

19 A. Yes.

20 Q. Okay. And would it be correct to say that
21 throughout your entire employment in the company, your
22 direct report was Paul?

23 A. Yes.

24 Q. And you worked for this company for, give or
25 take, a little over seven years, right?

1 A. Yes.

2 Q. And during these seven years, was your salary
3 raised?

4 A. Yes.

5 Q. You've already told me that they allowed you to
6 do more or had more duties than other people. So I'm
7 assuming that's kind of a promotion, correct?

8 A. No. The other duties allowed me to be
9 incentivized more, not -- not actual salary increases or
10 nothing.

11 Q. Okay. So incentivized more means your ability
12 to earn more money?

13 A. Yes.

14 Q. So would you agree with me that a person that's
15 receiving raises and being incentivized more than other
16 people at the company is not being discriminated,
17 correct?

18 A. No. I performed more duties.

19 Q. So that was -- performing more duties and
20 getting more pay was bad. Is that what you're telling
21 me?

22 A. No. I'm saying that it has nothing to do with
23 discrimination. I performed more duties.

24 Q. And had ability to earn more money, correct?

25 A. Yes, based off my talent.

1 Q. So that means that you were able to receive
2 better employment compensation, correct?

3 A. Based on my duties, not --

4 Q. So let me ask you this. You had ability to
5 receive better compensation than other people in the
6 company. Do you feel that was discriminating against
7 you?

8 A. No, but --

9 Q. Okay. Going back to your -- this line of
10 questions started with the day of your termination, and
11 you told me you had been called by Paul into his office.
12 Do you recall that?

13 A. Yes.

14 Q. Okay. Let's talk a little bit about that. Who
15 was in the office? Who was in Paul's office at the
16 time?

17 A. Just me and him.

18 Q. And was anybody nearby?

19 A. Yes. The dispatch people were right outside
20 his office.

21 Q. And do you recall what specific dispatch people
22 those were?

23 A. Lisa and Kelly and Paula and -- I forgot the
24 other lady's name. I forgot her name.

25 Q. Do you recall any of these people's last name?

1 A. I don't remember Lisa's last name. I know it's
2 Kellye Templeman and Paula Seddon.

3 Q. So they were not in the office, but they were
4 nearby when this conversation was happening?

5 A. Yeah. The dispatcher is right outside his
6 office.

7 Q. Do you think dispatchers are able to listen to
8 what conversation is happening in the office?

9 A. No, unless people get loud.

10 Q. So I need for you to make your best effort in
11 recollecting, to the best of your ability, that
12 conversation. Okay?

13 So who started the conversation? Was it
14 Paul or was it you?

15 A. Paul.

16 Q. Okay. What did he tell you?

17 A. He asked who was RSC, and I said it's me.

18 Q. And just to be clear, at this time, on
19 October 26, 2020, you'd never informed Paul or Kilgore
20 that you had formed RSC Mechanical?

21 A. Yes. I had informed them many times that I
22 might start RSC Mechanical because there were questions
23 that arose that he wanted to start -- he wanted to leave
24 as well.

25 Q. Okay. In your response, you said you informed

1 him that you might start, correct? That was your
2 testimony?

3 A. Yes. That had been conversation going on for
4 about two years.

5 Q. Okay. And you told me that in August 2020, you
6 formally opened up RSC Mechanical, correct?

7 A. Uh-huh.

8 Q. Yes?

9 A. Yes.

10 Q. And at no time after formally opening up
11 RSC Mechanical did you ever inform Paul that you had
12 actually opened this company?

13 A. No.

14 Q. And let's take this one step further. Before
15 this conversation with Paul that's being held on
16 October 26, 2020, you never informed him that you were
17 quoting Kilgore clients via RSC Mechanical, correct?

18 A. No.

19 Q. Okay. Going back to Paul's conversation with
20 you on October 26, 2020, you testified that he told
21 you -- he asked you who was RSC, and you responded it's
22 me. What happened after that?

23 A. He showed me the Dresser-Rand quote that was
24 given to him by -- not Kevin. Apparently somebody in
25 Dresser-Rand management.

1 So apparently Kevin was trying to set me up
2 as a new vendor, and then management, I guess, became
3 aware. But again, it was at the request of Kevin, who
4 is a Dresser employee.

5 Q. So based on this testimony, would you say it's
6 correct to say that apparently somebody at Dresser
7 didn't like the fact that a Kilgore employee was quoting
8 under another name?

9 A. Yes.

10 Q. Do you see any impropriety in that action?

11 A. No.

12 Q. So once Paul presents to you with RSC quotes to
13 Dresser, what happened?

14 A. Said I'm going to have to let you go. I said
15 okay.

16 Q. Was that the only response you gave him, okay?

17 A. No. We obviously talked about the money that
18 they owed me, commission -- I don't know -- hundreds of
19 thousands of dollars. And he said he was going to
20 finish the report and present it to ownership and then I
21 might need to get a lawyer to get my money.

22 Q. Okay. Let's talk in detail about that
23 conversation. And again, I'm going to request that you
24 do the best that you can and give me the exact words
25 each party was saying at the time.

1 So Paul told -- this is what you've
2 testified so far. Paul told you that he was going to
3 have to let you go, and you said okay. What happened
4 after that, to the best of your recollection?

5 A. Yeah. We talked about specific projects.
6 Actually, in the moment of my letting go, the -- when I
7 said D.E. Harvey, I was actually getting the PO for
8 D.E. Harvey. They were dinging on my phone.

9 So as I handed him the phone and the
10 laptop, I said, well, I'm going to want commission on
11 this one because this one was correlated -- awarded to
12 me specifically for me. Okay? D.E. Harvey did not want
13 to do work with Kilgore. They wanted to do work with
14 Rudy Carmona through Halliburton. The relationship had
15 nothing to do with Kilgore. D.E. Harvey was -- asked to
16 work with Rudy Carmona.

17 So this was specific. I asked all the
18 other projects, the Dresser projects, the FMC projects.
19 He said, well, the best I can do is write the report and
20 present it to ownership. So it went on into what am I
21 owed and I need my money, and that's what -- the
22 direction the conversation went into.

23 Q. Okay. Did you request a specific amount of
24 money to Paul at the time?

25 A. No, because I was waiting for his report, but I

1 had an assumption based off what I knew my profit
2 margins were.

3 Q. Okay.

4 A. But there was at least 10 large and about 20
5 small projects, because we get paid on projects, T&M,
6 which is time and material, and service work.

7 Q. Okay. Let's break your response down. At the
8 time of your termination, talk to me about your
9 compensation package. Was there a component -- a salary
10 component?

11 A. Yes. There's a draw that's covered by my
12 ability to perform.

13 Q. Okay. And that draw -- and what was that draw?
14 Was it per month, per week?

15 A. Per week. We got paid weekly.

16 Q. And at the time of your termination, what was
17 your draw?

18 A. So it had got increased to a hundred thousand,
19 so I don't know the math right now. I think it was 19,
20 1900 a week, something like that. I don't know. Before
21 taxes.

22 Q. So when you say you were increased to a hundred
23 thousand, that would have been a hundred thousand yearly
24 salary is your testimony?

25 A. Yes. What's funny is they were trying to pull

1 it back. They awarded it right before the Corona. Then
2 they tried to pull it back, but then I got awarded all
3 these large projects and --

4 Q. So it was never pulled back?

5 A. No.

6 Q. Okay.

7 A. Because I was performing exceptionally well
8 during the Corona.

9 Q. So when you talk about a draw -- and correct me
10 if I'm wrong -- that means that you get a weekly amount,
11 and based on your performance, if you don't get to that
12 amount, that could be reduced?

13 A. No. The reduction was because Kilgore was
14 struggling financially during the Corona. So all major
15 management and high salary people were going to be asked
16 to be reduced, and there was reduction. There was waves
17 of reduction, but I was performing well and I had just
18 signed the FMC project, and I said, you can't reduce it,
19 I just got this award. Or, obviously, I made my
20 threats, I'll go somewhere else and take all my clients
21 with me.

22 Q. Was that typical, your typical way of working?
23 Would you repeatedly threaten Kilgore with leaving?

24 A. I was -- yes. When I was repeatedly harassed
25 and treated bad, yes. It was typical for me to -- to

1 get my statement and not get paid on my bonuses for
2 weeks and months while others who had smaller incentives
3 would get paid quicker, but mine were held up.

4 So I was the highest performing guy, but I
5 was treated worse. And I was constantly harassed by my
6 boss as to I'm going to make more than him this year.

7 Q. Okay. Let's break this testimony down. First
8 and foremost, we started talking about your draw and the
9 composition of your compensation at Kilgore at the time
10 of your termination. Besides the draw, were there any
11 bonuses, incentives or other benefits?

12 A. The incentives were just based on the
13 performance of the jobs.

14 Q. Can you repeat that again, please?

15 A. The incentives were based off the performances
16 of the jobs.

17 Q. Okay. And what were those incentives?

18 A. They were bonuses or commissions based on the
19 jobs, based on how profitable.

20 Q. How would those commissions be distributed?

21 A. He would run a report monthly.

22 Q. Okay. So who runs a report?

23 A. Paul.

24 Q. And he runs a report on what?

25 A. On the -- on the sales that we perform on.

1 Again, projects, T&M and service, and it was always a
2 constant battle.

3 Q. So Paul runs a monthly report on the sales of
4 projects, TM and service that, for example, you made for
5 Kilgore that month? Yes?

6 A. Yes, yes.

7 Q. Okay. And you don't get paid on the entirety
8 of the sales that Kilgore makes, correct?

9 A. No. I get a percentage based off the sales
10 plan.

11 Q. Okay. So let's talk about that sales plan. At
12 the time of your termination, do you recall what your
13 sales plan was?

14 A. Yes. It was 20 percent of net after overhead
15 cost, which had changed because of me.

16 Q. Okay. Are we a hundred percent -- are you a
17 hundred percent sure that your commission was -- the
18 commission you would be entitled at Kilgore was 20
19 percent net sales after overhead costs?

20 A. Yes.

21 Q. So whatever sales you made for the company,
22 Paul would run a report, and that amount, you would
23 receive incentives or bonuses for 20 percent net after
24 overhead costs. Is that your testimony?

25 A. Yes.

1 Q. Now, let me ask you this. Is that compensation
2 plan in writing somewhere?

3 A. Yes.

4 Q. Where?

5 A. It was presented by email, an actual like --

6 Q. Presented to you?

7 A. Yes. It was given to all the salespeople. The
8 plan had -- in seven years, had changed three times
9 because of me, because I was making, quote/unquote, too
10 much money. And again, I was told directly by -- that
11 by ownership after a meeting because the sales plan was
12 changed. I was told by Jeff Kilgore, I can't pay a
13 sales guy 300,000, to make more than vice presidents.

14 Q. At the time of your termination -- I want to be
15 clear because you've said that this has changed. At the
16 time of your termination, your sales plan was 20 percent
17 net after overhead costs for any sales that you made?

18 A. Yes.

19 Q. Okay. Besides the draw and besides the sales
20 plan that you've indicated, any other components of your
21 compensation at Kilgore?

22 A. Yes, truck allowance.

23 Q. What was your truck allowance?

24 A. Five hundred a month.

25 Q. And would those three components be all for

1 your compensation at Kilgore?

2 A. Yes.

3 Q. At the time of your termination where you're
4 having these conversations -- this conversation with
5 Paul, you said that you had in -- I think the word you
6 used was an estimation. So in your head, you had a
7 figure that you thought you were owed by the company.
8 Would that be a correct statement?

9 A. Yes.

10 Q. Okay. And what would that figure be?

11 A. I would honestly estimate about 160.

12 Q. A hundred and sixteen, one six --

13 A. No, a hundred and six zero, 160.

14 Q. One six zero, zero, zero, zero?

15 A. Yeah.

16 Q. Okay. So at the time of your termination, you
17 estimated that you were owed this amount by Kilgore,
18 correct?

19 A. Yes.

20 Q. Okay. In this estimate that you did, did you
21 run it, reconcile it through any documents, papers with
22 your sales work, or this was something that you got off
23 the top of your head?

24 A. No. It's based off what I knew, projects that
25 had been closed, projects that were about to close, for

1 instance, the FMC, some of the Dresser projects, some of
2 the Halliburtons that were already -- they were done.
3 So my recollection of what the profits were for those
4 was understood.

5 It was the large other one that was done
6 for Halliburton right as I was getting released, the
7 large \$1.2 million project for Halliburton through
8 Harvey. That one, I did not know how it performed
9 because I -- as I was getting let go, I was getting the
10 POs.

11 Q. So when you talk about this estimate, you're
12 considering -- I mean, you have in your head what the
13 overhead costs were, what the original cost of the
14 project was --

15 A. Yes.

16 Q. -- and you're doing the math in your head?

17 A. Yes, yes.

18 Q. And to this day -- today, not during your
19 termination -- what amount do you believe that Kilgore
20 owes you?

21 A. A million dollars. I have -- I have -- during
22 the stress that Paul Kilgore caused me, I developed
23 Bell's palsy. I got Bell's palsy in December of '18 due
24 to the fact of the high stress levels, high harassment
25 created by Paul.

1 For -- prior to my termination, the last
2 four years, there was a battle every December because he
3 would want to push my last December bonus into January
4 to not affect the department's financial statements so
5 that he can get a bonus, but because of how these
6 projects worked, they would stack up. And each
7 December, I was always owed the largest bonus in the
8 department, and they ranged from 30- to 60,000. And he
9 would beg me -- he would beg me to push them into
10 January.

11 Q. How did you know that your bonus in the company
12 was the largest? Did you ever see a spreadsheet about
13 what everybody's compensation was?

14 A. No. He would tell me.

15 Q. So your knowledge and your testimony today is
16 that you had the largest bonus because you claim Paul
17 told you?

18 A. Paul told me and Jeff. Jeff would -- they
19 would sign the checks.

20 Q. Did Jeff ever tell you that your bonuses were
21 the largest in the company?

22 A. No, but he told me he didn't want to pay me
23 300,000.

24 Q. Going back to my question, did Jeff ever tell
25 you that you were the person receiving the largest bonus

1 in the company?

2 A. Not in the department, not in the company.
3 There's other departments that make more than the
4 service department.

5 Q. Did Jeff ever tell you that you were the person
6 in your department receiving the highest bonus?

7 A. Yes.

8 Q. Let's go back to your testimony. You said that
9 you developed Bell's palsy on or around December 2018,
10 correct?

11 A. Yes.

12 Q. Okay. Do you know what workers' compensation
13 is?

14 A. Workmen's comp?

15 Q. Yes. Do you know what that is?

16 A. Yes.

17 Q. Okay. In December 2018 and all the way through
18 October 26, 2020, you worked for Kilgore, correct?

19 A. Yes.

20 Q. At any point from December 2018 to October 26,
21 2020, did you ever request workers' compensation?

22 A. No.

23 Q. Yet your testimony today is that you've
24 developed a condition based on work, on a work-related
25 matter, correct?

1 A. Yes.

2 Q. Let's talk a little bit about Bell's palsy.
3 Did you tell anybody at the company, on or around
4 December 2018 or anytime thereafter, that you had been
5 diagnosed with this?

6 A. Yes, the doctors at St. Luke's.

7 Q. Doctors at St. Luke's diagnosed you, correct?

8 A. Yes, yes.

9 Q. Okay. Now, my question is different. My
10 question is, on or around the time you're diagnosed or
11 anytime thereafter while you worked for Kilgore, did you
12 ever tell anybody in the company that you had been
13 diagnosed with this?

14 A. Yes, HR and Paul. And, of course, everybody in
15 the company could see me, and --

16 Q. Okay.

17 A. -- we had Christmas parties, so ownership was
18 aware.

19 Q. So when did you tell HR?

20 A. When me and Paul had a dispute and we had to
21 get HR involved, so HR was aware.

22 Q. When was this?

23 A. Two or three days after I got it because we --

24 Q. Two or three days after what?

25 A. After I got Bell's palsy.

1 Q. Two or three -- so we're talking December 2018?

2 A. Yes.

3 Q. Okay. And who in HR did you tell specifically?

4 A. The HR director.

5 Q. And what is his name?

6 A. I forgot. It was a she. I don't remember her
7 name. She was only there for, like, six months, so I
8 don't remember her name.

9 Q. And you specifically told her you had Bell's
10 palsy?

11 A. Yes.

12 Q. And you told her for what reason?

13 A. I told her I had Bell's palsy because we -- me
14 and my supervisor were in a disagreement over my
15 commission. And we had got in a heated discussion, so
16 we had to involve HR.

17 And the discussion went as to I have to be
18 aware of other people's feelings because we don't know
19 what they're going through, and I told her I don't care
20 what Paul's going through, I have Bell's palsy. So his
21 feelings of how he's having his morning go are
22 irrelevant because I need my money that I've earned.

23 So we had to have a discussion with HR. So
24 as you can tell, we had to involve HR over my money.

25 Q. Well, let's talk about that. HR was involved

1 because of how you were addressing the situation with
2 another company employee, correct?

3 A. Yes, and HR realized that I was right.

4 Q. And why did this scale to HR? Were you talking
5 or conducting yourself in an inappropriate manner?

6 A. No.

7 Q. So the question still remains -- let's take it
8 one step at a time. The question still remains, why was
9 the situation escalated to HR?

10 A. Because I -- I requested HR.

11 Q. And at the same time you're telling HR, I
12 assume your testimony would be you were telling Paul,
13 correct, about the Bell's palsy?

14 A. Paul was in the room with HR.

15 Q. So that's the first time Paul learns about your
16 diagnosis?

17 A. No. He knew -- he knew the date -- the day
18 I -- I got it on a Saturday. I came to work Monday. We
19 didn't have the meeting with HR till, like, Thursday or
20 Friday.

21 Q. What did you tell Paul?

22 A. I have Bell's palsy.

23 Q. You told him on a Monday?

24 A. Yes.

25 Q. What was his response?

1 A. I should go to a doctor, and the doctor
2 diagnosed it that Monday, St. Luke's.

3 Q. Okay. So let me get this straight. Had you
4 been diagnosed prior to telling Paul, or did you get
5 diagnosed and then tell Paul?

6 A. No. Paul was aware Monday. It was assumed it
7 was Bell's palsy or a stroke. I got diagnosed Monday.
8 We had the HR meeting Thursday or Friday, and then they
9 were both well aware it was a proper diagnosis Thursday
10 and Friday.

11 Q. Okay. Let us go back on some testimony you've
12 provided previously to get all this straight. All of
13 this testimony has been provided because you told me
14 that you estimated that the company owes you a million
15 dollars, and you started talking about Bell's palsy.

16 Forgetting about damages and exclusively
17 talking about compensation, what is your claim that the
18 company currently owes you -- and when I say the
19 company, I mean Kilgore -- with regards to owed
20 compensation?

21 A. With no Bell's palsy, without the damages?

22 Q. Right.

23 A. Yeah. I believe they owe me the 160, plus any
24 lawyer fees associated with this and --

25 Q. Let's talk about that for a minute. Have you

1 paid any lawyer fees up-to-date with regards to this
2 case?

3 A. Yes, to Kennard Law.

4 Q. Okay. How much?

5 A. 16,000, I think, yeah. It's been --

6 Q. Would that be a thousand six hundred or
7 \$16,000?

8 A. \$16,000.

9 Q. And those \$16,000 that you paid, was that a
10 retainer fee?

11 A. It was in different stages. I don't know if
12 it's -- I think the first was 5,000.

13 Q. You've talked about 5,000. You've talked about
14 16,000. I just want to make sure, the total that you've
15 paid to your lawyers up-to-date is 16, one six,
16 thousand?

17 A. Yes.

18 Q. Do you know if your lawyers are contracted on a
19 per-hour basis or on a contingency fee basis?

20 A. It's not a per hour. I don't know what the
21 other part is, contingency.

22 Q. Do your attorneys get a percentage of what you
23 get, if anything, in this case?

24 A. Yes.

25 Q. Do you know if that percentage is 40 percent?

1 A. It's been two years or -- I don't know if it's
2 35 or 40. I don't remember.

3 Q. Okay. Now, you also testified that Paul
4 would -- the word you used was harass you with regards
5 to your bonus, correct?

6 A. Yes.

7 Q. Okay. Did you ever complain about Paul
8 harassing you at the company?

9 A. Yes. That's one of the reasons why we had that
10 meeting. I specifically asked to meet with him that
11 day. The conversation got heated because I was asking
12 for my statement to be presented. It had been weeks.

13 He said, I don't have time. He started to
14 yell, started to threaten to let me go. I said, well,
15 you know what, let's just get HR involved.

16 So, then, his argument to HR was that I
17 stormed his door, and, then, once we got in front of HR,
18 I said no, no, do you remember that I asked you in the
19 hallway if you had a minute, and then he remembered.

20 Q. During this conversation, did you specifically
21 tell HR, the lady that you don't remember the name, that
22 Paul was harassing you?

23 A. Yes. It was over -- it was over the fact of my
24 statement, that he was constantly withholding my
25 statement.

1 Q. Okay. But let's be clear here. One thing is
2 to tell HR that he's withholding your statement, and
3 another is to tell HR that he's harassing you.

4 During this conversation with HR, I
5 understand that you told them that he was withholding
6 your statement, correct?

7 A. Yes. So that's why she quit, because Kilgore
8 would not do nothing when things were presented to HR.

9 Q. That was not a question, but --

10 A. Yes.

11 Q. -- we'll go there. Let's take it step-by-step.

12 My next question would be, did you ever
13 specifically tell HR that Paul was harassing you, using
14 that word?

15 A. Yes.

16 Q. Okay. When did you tell HR that Paul was
17 harassing you?

18 A. After Paul left the room.

19 Q. And you specifically used that word?

20 A. Yes.

21 Q. Okay. And who did you say this to?

22 A. That HR lady.

23 Q. And what was her response, if any?

24 A. That she was going to try to address it with
25 ownership. That's why she lasted six months, because

1 ownership will not do nothing because ownership is
2 corrupt.

3 Q. Do you know when this HR lady that you don't
4 recall her name left?

5 A. She only lasted six months, so I would recall
6 June of '19. She had just -- she had just been there,
7 like, a month before this incident.

8 Q. So at the time that this lady from HR, who you
9 do not recall her name, left, did she provide you the
10 reasons for leaving?

11 A. No.

12 Q. Did anybody in the company come to you and show
13 you her termination documents?

14 A. No.

15 Q. Okay. So you can only assume the reasons as to
16 why she left, correct?

17 A. Yeah. There were just rumors about -- there
18 were many -- and that's just mine -- many, many other
19 associated HR violations that she would try to take to
20 ownership. So it was -- it was the wild west.

21 Q. So all of these rumors and all that, you have
22 no personal knowledge about those, correct?

23 A. No.

24 Q. And you have no personal knowledge as to the
25 reasons why this HR lady, who you don't remember her

1 name, left, correct?

2 A. Correct.

3 Q. Now, you stated that ownership is corrupt.
4 Those were your words, correct?

5 A. Yes.

6 Q. Okay. Those are strong words, and I remind you
7 that you are under oath. Why do you say that ownership
8 is corrupt, and who do you refer to as ownership?

9 A. Jeff and Ken Kilgore.

10 Q. And your sworn testimony that they are corrupt
11 are based on what?

12 A. I demanded a meeting in '16, one of the
13 second -- or first or second time the sales plan
14 changed, and it was me, my boss and the two owners. And
15 I was told to my face that they would never be able to
16 pay a salesman 300,000.

17 So rather than incentivize a guy that is
18 highly performing, they are changing the sales plan to
19 benefit their pockets rather than how I performed. I
20 call that corruption.

21 Q. What is your definition of corruption?

22 A. Stealing money. So I think they stole my
23 money. We had a sales plan in place that was in
24 writing, and they chose to change the plan.

25 Q. So this was back in 2016, you stated, right?

1 A. Yes.

2 Q. And you state in your testimony here today, not
3 mine, that they stole money from you, Jeff and Ken. Did
4 you do anything about them stealing your money, based on
5 your testimony?

6 A. No.

7 Q. Why not?

8 A. I probably should have got a lawyer.

9 Q. That's not my question. My question is, if
10 they stole money from you, why not do something about
11 it?

12 A. I'm doing something about it now.

13 Q. Okay. Going back to your original question,
14 which was the termination meeting, so how did that
15 meeting end with Paul? What happened at the end of the
16 meeting?

17 A. I just -- I gathered my few things in my desk,
18 and then we walked outside and I went on my way.

19 Q. At any point in time during this termination
20 meeting with Paul, did you tell him that Thanm was doing
21 this as well?

22 A. No. He -- we had prior conversations to this,
23 many conversations to this. In fact, I threatened to go
24 to ownership because I was tired of it.

25 Q. So at any time during this conversation with

1 Paul during your termination meeting, did you tell him
2 that he was discriminating against you?

3 A. No. I don't think I did.

4 Q. Once you left Kilgore on October 26, 2020, what
5 did you do with regards to work and income?

6 A. Well, I already had income from my windshield
7 business, but then I started to try to reach out to new
8 clients, try to build my company.

9 Q. And those clients that you were reaching out
10 to, were they Kilgore clients?

11 A. Some yes and some no.

12 Q. Okay. Which one of those that you reached out
13 to were Kilgore clients?

14 A. Obviously, FMC, and again, Halliburton was
15 aware the moment I am. So they were one of the ones. I
16 did not reach out to them. They reached out to me. So
17 the conversation began because of the D.E. Harvey PO.
18 Brookfield.

19 Q. Who else?

20 A. Those are the only Kilgore clients.

21 Q. So you talked about your windshield business.
22 So let me ask you this. Is Kilgore aware that you also
23 had a windshield business going on?

24 A. Yes.

25 Q. And they never had any issues with the

1 windshield business, correct?

2 A. No. I actually did Kilgore windshields.

3 Q. And as a matter of fact, your job at Kilgore
4 had nothing to do with windshields, right?

5 A. No. That's where I was -- I was actually doing
6 Kilgore windshields.

7 Q. Because a job that didn't conflict directly
8 with the job that you performed at Kilgore was okay to
9 do, not one that conflicted directly, correct?

10 A. Yes. They were aware from the moment of the
11 interview. Jeff and Paul asked me, and I said I have a
12 windshield business. So they were aware from day one.

13 MS. ALFARO: Why don't we take a break. It
14 is currently 10:08. Let's come back at 10:20.

15 THE WITNESS: Okay.

16 (A recess was taken.)

17 THE REPORTER: Go ahead.

18 MS. ALFARO: Thank you.

19 Q. (BY MS. ALFARO) Mr. Carmona, before we
20 continue, I just want to remind you that you are under
21 the same oath as this morning. Okay?

22 A. Okay.

23 Q. I'm going to go into some questions now. What
24 is your highest educational degree obtained?

25 A. I have an occupational certificate from

1 San Jac for HVAC.

2 Q. What year?

3 A. I think it was 2002. I think so, yeah.

4 Q. And prior to that, you graduated from high
5 school?

6 A. Yes.

7 Q. From where?

8 A. Stephen F. Austin High School.

9 Q. What year?

10 A. Oh, '99.

11 Q. Do you have any other certifications or
12 anything else?

13 A. Just my EPA license, my state contractor's
14 license for HVAC.

15 Q. And are those active and in good standing?

16 A. Yes.

17 Q. Let's talk a little bit about your employment
18 history prior to Kilgore. Prior to Kilgore, where were
19 you employed?

20 A. Before Kilgore, I was at Coopwood's air
21 conditioning.

22 Q. You worked there from when to when?

23 A. June -- April of '10 to March of '13.

24 Q. So you worked there three years?

25 A. Yes.

1 Q. And what was your position there?

2 A. I was a chiller, service tech.

3 Q. And why did your employment there finalize?

4 A. Because I got the position at Kilgore.

5 Q. So while working there, you were applying for
6 another position?

7 A. Yes.

8 Q. And why did you want to move?

9 A. I wanted to get out of the field.

10 Q. Your last day in Kilgore was October 26, 2020,
11 as you've stated. So throughout the entire 2021, you
12 worked under your windshield and RSC business, right?

13 A. Repeat that. I'm sorry.

14 Q. So for 2021, your sources of income were your
15 windshield business and RSC, correct?

16 A. Yes.

17 Q. Any other source of income during 2021?

18 A. Not mine. My wife has a -- she also works, but
19 it's not mine.

20 Q. So what was your income in total for 2021?

21 A. Gross or net?

22 Q. Either.

23 A. I think net, I would say -- I would say 600.

24 Q. \$600 or 600,000?

25 A. 600,000.

1 Q. Okay. And so you would say you're making more
2 on your own than with Kilgore?

3 A. Yes.

4 Q. Have you filed your tax returns for 2022?

5 A. No.

6 Q. Are you planning on filing them?

7 A. Yes.

8 Q. And again, to be clear, other than from these
9 two businesses, there's no other source of income for
10 you for 2021 on these net profits?

11 A. No.

12 Q. Now, have you been terminated from any other
13 employment other than Kilgore?

14 A. Yes.

15 Q. Okay. From where?

16 A. Project Lighting in 2000. 2000, I think.

17 Q. Is that the name of the company, Project
18 Lighting?

19 A. Yes.

20 Q. Where is that company located?

21 A. In Houston. I just don't know if they're --
22 they may still be in business.

23 Q. And why did they terminate you?

24 A. They said -- they claimed insubordination.

25 And, then, I obviously filed a discrimination, and then

1 I was awarded.

2 Q. You were awarded what?

3 A. I was awarded -- we settled for a small lump
4 sum for them being discriminating against me through --
5 I filed with the EEOC.

6 Q. So this is not your first rodeo with regards to
7 making a claim against an employer?

8 A. Yes.

9 Q. Okay. At that time, then, you filed an EEOC
10 charge, you said?

11 A. Yes.

12 Q. What year was that?

13 A. 2000.

14 Q. And you were claiming what type of
15 discrimination?

16 A. Racial.

17 Q. And how did that company discriminate against
18 you?

19 A. They were racist.

20 Q. What does that mean?

21 A. They called me a wetback.

22 Q. Was it your claim against Project Lighting that
23 they terminated you also because they discriminated
24 against you, just like in this case?

25 A. That they did -- yeah, they terminated me

1 because they discriminated against me, yes.

2 Q. So it's the same as what you're claiming in
3 this case, with a different set of facts?

4 A. Yes.

5 Q. Any other employer that you've filed a claim
6 against or sued?

7 A. Yes. I had filed a claim against Petrochem
8 also, but then I just -- I didn't -- I let it go.

9 Q. Okay. Let's talk a little bit about that. You
10 said Petrochem?

11 A. Yes.

12 Q. You worked for them?

13 A. Yes.

14 Q. When did you work for Petrochem?

15 A. April of '04 to -- I'm trying to think. July
16 of '09, I think.

17 Q. So you worked for Petrochem before working
18 for Coopwood's?

19 A. Yes.

20 Q. And what was your position there?

21 A. Also junior service tech, service tech.

22 Q. Where is Petrochem located?

23 A. La Porte.

24 Q. Who was your supervisor there?

25 A. There was many supervisors in five years. Mike

1 Bryant, Mike Woolhoff (phonetic), Troy -- Troy and Ricky
2 Tankersley.

3 Q. And were you terminated from Petrochem?

4 A. Was I terminated from Petrochem?

5 Q. Yes.

6 A. No.

7 Q. How did your employment with them end?

8 A. I went to Star Services. I left.

9 Q. You resigned?

10 A. Yes.

11 Q. Okay. And what is Star Services?

12 A. Another air conditioning company.

13 Q. And what is it that you claimed against
14 Petrochem?

15 A. They were also racist.

16 Q. Why were they racist?

17 A. Because they treated me, as the only Hispanic,
18 very badly, and there was racist comments made around me
19 and how they regarded Hispanics.

20 Q. So what did you do? Did you file an EEOC
21 complaint against Petrochem?

22 A. Yes.

23 Q. And you withdrew it?

24 A. Yes. I didn't withdraw it. I just didn't
25 continue to pursue it.

1 Q. Why not?

2 A. At the time, I was starting a new job, and I
3 had a newborn on the way, and there was just enormous
4 amounts of stress.

5 Q. Can we go back a minute to Project Lighting?
6 You said that you settled with them. How much did you
7 settle for?

8 A. I think it was like 5,000 bucks.

9 Q. About what?

10 A. \$5,000.

11 Q. Were you represented by counsel then?

12 A. No.

13 Q. How about in the claim -- the EEOC charge of
14 discrimination that you made against Petrochem?

15 A. No, no legal counsel.

16 Q. Any other claims, demands or complaints or
17 petitions or lawsuits filed against any other employers?

18 A. No.

19 Q. So since what year have you been working?

20 A. Since -- since I was in high school in 1998.

21 Q. And since that time, you've made these three
22 discrimination complaints, if we count the one that
23 you're now making against Kilgore, correct?

24 A. Yes.

25 Q. And they're all based on race discrimination?

1 A. Yes.

2 Q. Other than making claims, lawsuits or charges
3 against employers, have you ever been a plaintiff or a
4 defendant in any other lawsuit?

5 A. No.

6 Q. Any class action?

7 A. No. Wait a minute. Yeah, the BP -- BP Benzene
8 in 2010.

9 Q. Tell me about that. What happened there?

10 A. So Benzene -- BP released Benzene for 40 days.
11 So every -- everybody in the plant and a five-mile
12 radius around the plant was allowed to participate in
13 the class action suit against BP.

14 Q. And you opted to participate, correct?

15 A. Yeah. I got rained on Benzene for 40 days.

16 Q. And how much did you earn from that class
17 action?

18 A. \$20. I guess they settled. I have my opinion.

19 Q. You're certainly experienced in suits and legal
20 charges, correct?

21 A. Oh, I learned to stand up for myself.

22 Q. That was not my question. I mean, there's at
23 least four claims, lawsuits or charges, so I think it
24 would be reasonable to say that you're experienced in
25 making claims, correct?

1 MR. HODGES: Objection, form.

2 Q. (BY MS. ALFARO) Go ahead. You can answer,

3 Mr. Carmona.

4 A. That I'm quite experienced?

5 Q. I said that you're experienced.

6 A. I've had experiences, yes.

7 Q. Okay.

8 A. I can't see you no more. Is it my internet?

9 THE REPORTER: I can't see her either.

10 MS. ALFARO: Oh, I'm sorry. I'm sorry. My
11 bad. There we go. My apologies.

12 Q. (BY MS. ALFARO) Okay. A while back -- and I
13 just want to make sure we have this clear. With regards
14 to compensation, meaning salary, et cetera, and
15 everything else, you said that you estimated that the
16 company owes you about \$160,000. Do you remember that?

17 A. Yes.

18 Q. Okay. The complaint filed by your attorneys in
19 this case -- you're aware that your attorneys filed a
20 complaint in this case in court on your behalf, correct?

21 MS. ALFARO: Is he frozen?

22 THE REPORTER: I think so.

23 MS. ALFARO: Mr. Carmona?

24 THE REPORTER: Do you want to go off till
25 we get him back? There we go.

1 THE WITNESS: Hello.

2 Q. (BY MS. ALFARO) Hello. Can you hear us?

3 A. Yeah. I can hear you now. It was very choppy,
4 freezing up.

5 Q. Yeah. You were frozen on our end, so I'm going
6 to repeat the question.

7 Do you recall when you said to me that you
8 estimated that the Kilgore company owes you about
9 \$160,000 with regards to monetary compensation, correct?

10 A. Yes.

11 Q. Okay. Would that be the entirety of what they
12 owe you with regards to any salary, bonuses, benefits or
13 compensation, company compensation, employment
14 compensation?

15 A. Yeah. Just in regards to company compensation,
16 yes.

17 Q. Okay. Now, before we start on another topic, I
18 wanted to ask you, once you were terminated from
19 Kilgore, did you request unemployment benefits?

20 A. Are you talking about unemployment?

21 Q. Yes, sir.

22 A. No, no.

23 Q. Going back to the question before you froze,
24 are you aware that your attorneys in this case filed a
25 complaint in court on your behalf against Kilgore?

1 A. Yes.

2 Q. Okay. Have you read that complaint?

3 A. Not in full, yes, but I have read it.

4 Q. Are you in agreement with what you've read
5 about that complaint?

6 A. Yes.

7 Q. Why have you not read it in full?

8 A. I mean, I skimmed through it, the
9 discrimination stuff and the wages stuff and loss of
10 pain and suffering with regards to my Bell's palsy, and
11 it was a long document. I just highlight -- I just read
12 over the important stuff.

13 Q. Okay. So let me ask you this. With regards to
14 what your attorneys claim you are owed in compensation
15 in that complaint, are you in agreement with that?

16 A. Yes.

17 Q. Your complaint says -- when it was filed by
18 your attorney, says that you were -- you estimate being
19 owed a hundred thousand dollars. So is that correct?

20 A. No. It's 160.

21 Q. So would you say that the complaint your
22 attorneys filed is incorrect?

23 A. I think it was just estimated.

24 Q. And how did that estimate change from the time
25 the complaint was filed, from after your termination to

1 today, for over \$60,000, for about \$60,000?

2 A. I don't know how it got estimated, but again,
3 I'm estimating what they owe me in a project that I did
4 not see the revenue, which is the lab project for
5 Halliburton.

6 Q. Let me get this clear. Is a hundred thousand
7 incorrect or your 160 incorrect?

8 A. A hundred thousand is incorrect.

9 Q. Okay. So let's talk about your claim. So
10 you're aware that you've made discrimination and
11 retaliation claims against Kilgore, correct?

12 A. Yes.

13 Q. Okay. And what are the basis -- what basis are
14 you claiming that Kilgore discriminated against you?

15 A. Race.

16 Q. Okay. Anything else, or would that be all?

17 A. No. The race, the harassment, the constant
18 withholdings of my compensation, the constant -- the
19 constant bickering with my superior over how much I make
20 every month.

21 Q. And your claim is that all of those things that
22 you're alleging that happened occurred because of your
23 race. Is that your allegation?

24 A. Yes.

25 Q. And all of those things that you just testified

1 occurred only because of your race. That's what you're
2 claiming?

3 A. Yes, because they did not happen to the -- the
4 white salespeople at Kilgore.

5 Q. Okay. Let's talk a little bit more about that.
6 Can you please explain to me each and every alleged act
7 of discrimination that Kilgore did against you?

8 A. I can't explain each and every one. I don't
9 know.

10 Q. Well, sir, this is your complaint, so I need
11 for you to tell me each and every one.

12 A. I'm going to explain the ones that I remember.

13 Q. Okay.

14 A. So I was constantly being withheld my monthly
15 statements while the white guys were not. Now, that's
16 years and years, obviously seven years. Okay?

17 I was constantly asked to renegotiate in
18 December, and the white guys were not.

19 I, who had the largest projects and
20 required the most manpower on my projects, was having to
21 fight for manpower while the white salespeople did not.

22 I was blasted on emails in front of the
23 whole department as to why I was calling the technicians
24 while they were on the other jobs with the white
25 salesmen. Your camera went off.

1 Q. I don't understand why this is happening.
2 We're back. My apologies, and my hands are not even --
3 let's try it again. Blasted on emails?

4 A. Blasted on emails when my projects easily
5 showed I required more manpower, and I constantly had to
6 fight with my supervisor while the white guys got all
7 the preferential treatment. Okay?

8 I specifically asked my superior -- I
9 wanted to know why my -- why my -- how do you say it, my
10 sales plan or my -- actually, what's it called? Where
11 my -- I'm expected my -- shoot, man, what's that called?
12 My quota.

13 My quota was constantly increased while the
14 white guy's was not, who started with me on the same
15 day, Steve Saitas. I made that request three years in a
16 row, why do you constantly raise my quota while Steve
17 Saitas' is not.

18 And I specifically in emails -- I don't
19 know. Maybe not emails -- specifically in
20 conversations, asked them to present and show me Steve
21 Saitas's quotas because I specifically told them, you
22 are being racist towards me because I sell more and I'm
23 Hispanic, but the white guy that started with me on the
24 same day, you can't show me his quota, you're harassing
25 me, you're being racist against me, specifically told

1 him to his face.

2 Q. Anything else, or would that be all?

3 A. No. There's much more, but I'm trying to
4 remember.

5 Q. So at this time, you don't remember anything
6 else?

7 A. Not at this time. I mean -- hold on. Okay.

8 Why -- why I was being targeted as the
9 sales plans being changed because I'm the highest. Why
10 are you changing the sales plan and specifically calling
11 me as the reason to change the plan rather than, you
12 know, say as a team, we're doing better. But it was
13 mainly because they didn't want to pay me more.

14 Q. Would that be all?

15 A. That's to the best I can remember, but there's
16 more. I just can't remember at the moment.

17 Q. Okay. If at any point in time during the
18 deposition you remember, you let me know. Okay?

19 A. Okay.

20 Q. So let's break these down. The first thing
21 that you said was that you were constantly being
22 withheld your statements while the white employees were
23 not?

24 A. Yes.

25 Q. So let's talk about this. What white employees

1 are you referring to?

2 A. Steve Saitas, Greg Cannell, Philip Hines.

3 Q. Craig Cannell and who else?

4 A. Philip Hines and Steve Saitas.

5 Q. Okay. Three people, right?

6 A. Yes.

7 Q. Okay. And you know as a matter of fact that
8 all of these three individuals identify as white or
9 Caucasian?

10 A. Yes, they're white.

11 Q. My question is different. You know as a matter
12 of fact that they identify as white or Caucasian?

13 A. To the best of my knowledge, I know they
14 identify as white.

15 Q. Okay. Now, what was Steve's position?

16 A. Service sales. Oh, I remember -- I remember
17 another one. In December of '16, I was specifically
18 asked to negotiate, meaning my commission should have
19 been upwards of 40. I was asked to reduce it. And I
20 think I -- I think I have the email. I did send to
21 counsel.

22 I was asked to reduce it. They -- they
23 butchered the sales plan, meaning they -- they doctored
24 it, my percentage. And then I asked him specifically,
25 am I the only one you're doing this for, and he said no.

1 I said, okay, if I'm not the only one you're asking to
2 doctor and manipulate the percentage, I need you to
3 prove that you've done -- you've done it to the other
4 white guys. He could not prove it, and he would not
5 present me the documentation.

6 Q. Okay. Going back to what we were talking
7 about, the statements, Steve's position is service
8 sales, correct?

9 A. Yes.

10 Q. Is that your same position at the company?

11 A. Yes.

12 Q. How about Craig Cannell's position?

13 A. Yes.

14 Q. Yes, what? He's service sales?

15 A. Yes.

16 Q. Okay. And that would be your same position at
17 the company?

18 A. Yes.

19 Q. How about Philip? What was his position in the
20 company?

21 A. Service sales.

22 Q. Okay. And that would be your same position in
23 the company?

24 A. Yes.

25 Q. When you say that they were constantly

1 withholding statements, what statements are you
2 referencing?

3 A. The monthly sales statements. And going -- I
4 wanted to add to that monthly sales statement.

5 Q. Go ahead.

6 A. In 2017, they withheld them for nine months,
7 and it became a battle.

8 Q. Okay.

9 A. Because of a software issue from changing
10 softwares that they claim, and then I had to
11 forcefully -- forcefully ask for paperwork and
12 documentation because at the end of the nine months,
13 they claimed that all four salesmen were in the -- in
14 the red.

15 And then I called BS, and this is another
16 example of Paul's manipulation, and he said prove it. I
17 said, well, I have no access to your software, you have
18 to give me documentation. That's where Paula Seddon
19 gave me documentation, and I proved they were wrong.
20 His statement was wrong for nine months.

21 Then he asked me to cover it up and not say
22 nothing while he did damage control because he now owed
23 all four salesmen money. Of course, I was the largest.
24 He asked me to not say nothing. I did because that was
25 a lot of people's money at the time.

1 He owed thousands of dollars, and it was
2 going to affect his statement, and he had made a drastic
3 mistake for nine months. So that's another part of the
4 harassment.

5 Q. Let's talk about that for a minute. You said
6 that in 2017, the statements were withheld for nine
7 months because of software issues, right?

8 A. Yes.

9 Q. So that was -- they were not withheld because
10 they were discriminating against you for being Hispanic,
11 correct?

12 A. Well, that's --

13 MR. HODGES: Objection, form.

14 Q. (BY MS. ALFARO) Mr. Carmona, my question is
15 simple. You stated and you've agreed, and you stated
16 under oath, that those statements were withheld because
17 of software issues, not because you were Hispanic,
18 correct?

19 A. Well, just in that year.

20 Q. Okay.

21 A. But the -- but I had --

22 Q. There's no question on the table. And with
23 regards to this -- these software issues, you also
24 testified that all four employees, meaning the three
25 people that you're claiming are white, plus yourself,

1 the statements were withheld from the four of you,
2 correct?

3 A. Uh-huh.

4 Q. Yes?

5 A. Yes.

6 Q. So you would say that that -- what you call
7 that withholding of those statements to three Caucasian
8 or white employees and yourself would not be
9 discriminatory, correct?

10 A. No, not in that instance. But to add to that
11 scenario, I was called the ringleader among the four
12 because I was demanding meetings. So I was called out
13 amongst the four, and I was called the ringleader.

14 Q. Let me ask you something. Did Steve request a
15 meeting?

16 A. No.

17 Q. Did Craig request a meeting?

18 A. No. Wait, wait, wait. Wait, wait, wait.
19 Amongst the nine months, I think they did.

20 Q. You think. Are you sure?

21 A. Yeah, I'm sure they did.

22 Q. Now, going back to your original statement,
23 which was that you were constantly being withheld
24 statements and not -- the white individuals were not,
25 you say that this was constantly happening. I need to

1 know all of the instances that you specifically recall,
2 and I'm requesting dates of statements that were
3 withheld.

4 A. Well, we can go back to when this -- the
5 commission started to change in '16. I can -- I don't
6 know specific dates, but there were several months
7 throughout '16, '17, '18, '19 and '20. That is when my
8 commissions start to skyrocket, and they were starting
9 to withhold them, specifically because he did not -- and
10 these were direct conversations with Paul. The large
11 payouts were affecting his balance sheet, and they
12 were --

13 Q. The question was --

14 A. -- year after year --

15 Q. There's no question on the table right now. My
16 question is, we're talking about dates. You told me
17 2016, 2017, 2018, 2019, 2020. Now -- but you don't
18 recall specific dates.

19 Then let me ask you this question. For
20 every single month of every single year between 2016 and
21 2020, were your statements withheld?

22 A. Yes, not every month.

23 Q. Okay. So that was my question. Let's talk
24 about this again because we have to be precise. It's
25 important. My question was, for every month between

1 2016 and 2020, is it your claim that your statements
2 were withheld for each and every month?

3 A. I can say 50 percent of the time, they were.

4 Q. That's not my question. My question is, for
5 every month of every year between 2016 and 2020, were
6 your statements withheld, yes or no?

7 A. Six months out of the year, they were.

8 Q. That's not my question, Mr. Carmona. You've
9 got to listen to my question and answer my question.

10 A. Not every month. Not every month, they were
11 not, but --

12 Q. Okay. They were not. Now, which months, from
13 2016 to 2020, specifically were they withheld?

14 A. I can unequivocally tell you, every December
15 they were.

16 Q. Besides December for every year, any other
17 month that you can state with certainty that they were,
18 these statements were withheld?

19 A. Okay. And it will be easy to pin down. When
20 the statements were over 20,000, they were withheld.

21 Q. That's not my question. My question is regards
22 to date.

23 A. I don't know.

24 Q. With regards to date.

25 A. If I can go to the time when the amounts were

1 over 20,000, that's when they were withheld. So I can
2 go back and --

3 Q. So with regards to dates, besides telling me
4 that every December between 2016 and 2020, your
5 statements were withheld, you cannot tell me precisely
6 what months your statements were withheld?

7 A. No, without looking at the actual -- going back
8 and looking at the actual statements, no.

9 Q. And, then, on each December from 2016 to 2020,
10 were the statements from Steve withheld?

11 A. No.

12 Q. How do you know?

13 A. Because I was -- we would ask each other.

14 Q. You're testifying today that you spoke with
15 Steve and Steve told you in 2016, December 2016, that
16 the statements were not withheld?

17 A. Yeah. We would talk to each other, what was
18 your statement, did you get your statement. Yes, I did.
19 No, I didn't. Yes, I did.

20 Q. So you asked Steve -- is your testimony here
21 today under oath that you asked Steve in December 2016
22 whether he had gotten his statements?

23 A. Yes.

24 Q. Is your statement today here under oath that
25 in December 2017, you asked Craig whether he had gotten

1 his statements?

2 A. I don't think I asked Craig. I asked Philip,
3 Philip and Steve.

4 Q. Okay. So when you say that all of the white
5 employees, their statements were withheld, that's an
6 incorrect statement. You don't know that?

7 A. I don't know if Craig's was, but -- I don't
8 know, but I asked Paul to prove that -- why was mine
9 being withheld, and he could not prove it.

10 Q. Okay. I'm going to ask you one more time, to
11 be clear. Can you unequivocally say that from 2016 to
12 2020, December 2016 through December 2020, you asked
13 Steve and Craig and Philip and you absolutely know from
14 personal knowledge, as a matter of fact, that their
15 statements were not withheld, or would that be an
16 incorrect statement?

17 A. Every December --

18 Q. Yes, sir. That's what you told me, that those
19 were the ones you knew.

20 A. No. Every December, mine were withheld.
21 Whether theirs was withheld, it was only certain
22 specific times. Like, the one in '16 was specific
23 because my commission plan was being -- it was being
24 doctored. So in '16, I can confirm that I was the only
25 one withheld.

1 Q. Can you confirm that in 2017, your statements
2 were the only ones withheld?

3 A. Say it again.

4 Q. Can you confirm that in December 2017, your
5 statements were the only ones withheld?

6 A. No. Like I said, in the nine months, I think
7 everybody's was withheld.

8 Q. And in 2018, December 2018, can you confirm
9 that your statements were the only ones withheld?

10 A. Yes.

11 Q. Can you confirm that you asked Steve whether
12 his statements had been withheld in December 2018?

13 A. Yes.

14 Q. Can you confirm that you asked Craig in
15 December 2018 whether his statements were withheld?

16 A. Yeah, yes.

17 Q. Can you confirm that you asked Philip in
18 December 2018 whether his statements were withheld?

19 A. Yes.

20 Q. How about in December 2019? Can you confirm
21 that you were the only employee whose statements were
22 withheld?

23 A. '19? '19, I can only recall December.
24 December was the only ones I can always recall because
25 those were the worst.

1 Q. And that's the only one I'm asking you because
2 those are the only ones you've been able to identify.
3 So for the statements of December 2019, do you know, can
4 you confirm that as a matter of fact, your statements
5 were the only ones withheld?

6 A. Yes.

7 Q. Did you talk to Steve about this and confirm
8 this?

9 A. Yes.

10 Q. Did you talk to Craig and confirm this?

11 A. Yes.

12 Q. Did you talk to Philip and confirm this?

13 A. Yes.

14 Q. And then December 2020, you weren't working for
15 the company, correct?

16 A. I wasn't there.

17 THE REPORTER: You said December 2010?

18 MS. ALFARO: 2020.

19 Q. (BY MS. ALFARO) Okay. The second -- well,
20 before we do that -- and it is your testimony today
21 under oath that the only reason you believe these
22 statements were withheld from you was because you were
23 Hispanic, correct?

24 A. Hispanic, and because they were large payouts.

25 Q. And when you say they were large payouts, what

1 you're trying to tell me is the company didn't want to
2 pay you simply because you were earning a lot of money.
3 Is that what you're telling me?

4 A. Well, specifically because of the -- Paul did
5 not want them to hit in that calendar year. He wanted
6 to push them to the next calendar year. So if I
7 actually -- the statement was run in December. But if I
8 actually got the payment in January, it would not affect
9 his payout that calendar year.

10 Q. Okay. So let me do this. The reason these
11 statements were not being provided to you and these
12 payouts were not being made to you, was it really
13 because they were large, not because you were Hispanic?

14 A. No. It's both because -- because I can -- I
15 know that Steve's were not as large. He was the second
16 guy. But where mine were in the 40s, his may have been
17 in the 20s and 30s, which are still large. He would get
18 paid, and I wouldn't.

19 Q. And this is exclusively based on the fact that
20 Steve is white. You have no other evidence to prove
21 this discrimination, correct?

22 A. Yeah, Steve is white.

23 Q. Okay. And this question is important. Other
24 than the fact that Steve is white and your race,
25 pursuant to how you identify yourself, is Hispanic, you

1 have no other evidence of race discrimination, right?

2 A. No. Are you talking about with others or
3 with --

4 Q. No. I'm talking about any other evidence that
5 you might have of race discrimination. My
6 understanding, based on your testimony, is that your
7 only evidence of race discrimination is the fact that
8 these other individuals are white, but if there's any
9 other evidence, I need to know.

10 A. Yeah. I mean, that there were -- they were
11 white, and they were given preferential treatment.

12 Q. Okay. And that would be the extent of the
13 evidence of discrimination that you have, correct?

14 A. Uh-huh.

15 Q. Yes?

16 A. Yes.

17 Q. Thank you. Okay. Let's go to the second
18 allegation that you made. You said that they constantly
19 asked you to renegotiate in December while the guys --
20 white guys, as you referred to them, were not.

21 Let's break this down. Who constantly
22 asked you to renegotiate in December?

23 A. Paul.

24 Q. And what was he asking you to renegotiate in
25 December?

1 A. Well, he was asking me to push it into the next
2 calendar year, but there was one year specific, '16,
3 where he manually -- manually entered the percentages on
4 the spreadsheet to decrease my payout.

5 Q. When did you file your charge of
6 discrimination, what year? Do you recall?

7 A. When? With -- against Kilgore?

8 Q. Against Kilgore, yes, sir.

9 A. I think it was --

10 Q. Let me help you here a little. So your
11 termination was October 26, 2020. We can -- we can
12 affirm that that charge of discrimination was filed
13 after your termination, right?

14 A. Yes.

15 Q. Okay. So do you recall, give or take, when
16 after October 26, 2020 you filed it?

17 A. I don't know if it was -- I know it was within
18 a few weeks or months, maybe November, December.

19 Q. Okay. So it was in 2020?

20 A. I think so.

21 Q. Okay. And that charge of discrimination, did
22 you file it on your own, or were you advised by counsel?

23 A. No. I filed it on my own.

24 Q. When did you hire Kennard as your attorneys?

25 A. I think -- I think December or January. I

1 don't know. I don't remember.

2 Q. 2021, January 2021?

3 A. Yeah, either December or January.

4 Q. And in your charge of discrimination, what was
5 your claim, also racial discrimination?

6 A. Yes, racial discrimination.

7 Q. Now, going back to what you were telling me,
8 you're telling me that Paul constantly asked you to
9 renegotiate in December your, I guess, bonus payments?

10 A. Yes.

11 Q. While he was not asking the white guys to do
12 so. So in December 2016, did he ask you to renegotiate
13 your bonus?

14 A. Yes.

15 Q. From what amount to what amount?

16 A. There was a percentage -- a percentage
17 spreadsheet that was emailed to me that I emailed to my
18 counsel. It was a breakdown on how he doctored it, and
19 on the spreadsheet, it shows what he's supposed to be
20 paying me, which -- and then he sent it to me saying
21 this is what he thinks is fair.

22 Q. Was there any explanation given to you as to
23 what fair meant?

24 A. Yeah. He tried to say this is the guidelines.
25 You should be in the 20 percent profit, but you're in

1 the 40. I said, well, I did my job well, I managed the
2 project well, why -- why are you asking me to get paid
3 less. And, then, that's when I said, are you doing this
4 to the other guys.

5 Q. Okay. I need to understand. I'm not
6 understanding. What was it specifically that you
7 believe you were entitled to versus what Paul was
8 offering you?

9 A. Yes. I'm entitled to the sales plan. I get
10 20 percent of net, meaning because --

11 Q. And what was Paul trying to tell you that you
12 would receive instead?

13 A. He was manually entering other percentages that
14 lowered my commission, meaning instead of 20 percent
15 net, he felt like I should get 15 percent or whatever
16 the spreadsheet shows. I don't have it in front of me.
17 And it's a manual entry, and he shows the guideline. He
18 shows what I should get paid, and he even highlights it.

19 Q. So let me ask you this. For December 2016,
20 what did you get paid, what you felt you were entitled
21 to or less?

22 A. Oh, I got --

23 THE REPORTER: I'm sorry. What?

24 THE WITNESS: I got less.

25 Q. (BY MS. ALFARO) And when you got less, what

1 did you do about that?

2 A. That's when we -- I demanded the meetings.

3 Q. Okay. What happened?

4 A. I was told -- I was told that the sales plan
5 was changing and that they could not afford to pay a
6 sales guy 300,000.

7 Q. And once they told you that, what, if anything,
8 did you do about it?

9 A. I mean, what could I do?

10 Q. That's not my question. My question is what,
11 if anything, did you do about it? Is the answer
12 nothing?

13 A. Nothing.

14 Q. And you're claiming that from 2016 to 2020,
15 neither Steve, Craig nor Philip -- and this is your
16 personal knowledge. Paul never asked them to
17 renegotiate their commissions, incentives or bonuses?

18 A. Yes. Now --

19 Q. Can you state that as a matter of fact, or are
20 you assuming that?

21 A. No. In regards to this one situation, I asked
22 him to present documentations that he had done that to
23 other guys, and he did not, and he never did.

24 Now, the plan changed for the whole team in
25 regards to the fact that I was making too much money,

1 but in this specific instance, I specifically asked him,
2 show me that you have done this to the other guys, and
3 he never did.

4 Q. Okay. So in 2016, you asked Paul to show you
5 that he had done this to the other people, and you've
6 stated he never did?

7 A. Yes.

8 Q. But you don't -- other than Paul never showing
9 you confidential employee documents, you don't have
10 proof that this happened to the other folks, correct?

11 A. No.

12 Q. Okay. Now, you've talked to me about the plan.
13 I'm assuming that's the incentive plan changing for the
14 whole team, for all four of you?

15 A. Yes.

16 Q. Okay. So when the company changed the numbers
17 or the compensation, they did it across the board, to
18 the white guys and to yourself, correct?

19 A. Yes.

20 Q. The next allegation that you testified about
21 was that you would have to fight for manpower, correct?

22 A. Yes.

23 Q. Okay. So let's talk about this. Tell me each
24 and every instance that you had to fight for manpower.

25 A. I would specifically call service managers,

1 dispatchers. While my projects were in the hundreds of
2 thousands and required more manpower, I would
3 specifically have to fight with Paul when the white guys
4 had small jobs. Yet I had to fight to get manpower on
5 my projects that were much larger from them.

6 So the preferential treatment of allocating
7 manpower was always a struggle because it's almost --
8 man, the first four years were awesome. Now it became a
9 vendetta to try to make me look bad by having my jobs
10 struggle so that he could get rid of me.

11 Q. Who told you that they were purposely trying
12 to -- this had become a vendetta and purposely trying to
13 make you look bad, or is that your assumption?

14 A. No. He would -- he would bring me in the
15 office and say, you're going to make more than me this
16 year again. And he specifically said, if it wasn't for
17 how talented I am, he would have got me fired long ago.
18 Paul's words himself.

19 Q. So let me ask you this. Was this a battle for
20 money? I mean, was Paul really just mortified that you
21 were making more money than him?

22 A. Oh, yeah. It was -- let me tell you how
23 mortified. In '18, we had the same topic, you're going
24 to make more than me this year, and I -- I guessed his
25 salary. So he went to the other VPs asking if they had

1 told me his salary because he was embarrassed that I was
2 going to make more than him again this year.

3 Q. So the real issue that Paul had against you was
4 simply a money one, that you were making more money than
5 him, right?

6 A. I think it was both.

7 Q. Which both? One money and the other one being
8 what?

9 A. Racist, because I think Steve made more than
10 him, too, but Steve was never treated like this.

11 Q. So let me ask you this. If Paul was racist,
12 why would he have hired you from the get-go?

13 A. Because he -- he admitted that he had never had
14 a sales guy with the vast technical experience that I
15 had.

16 Q. Yeah, but that doesn't answer my question. I
17 mean, if Paul was racist, he knows this from the get-go.
18 Yet he decided to hire you. Can you explain that?

19 A. Maybe at the time, money contributed to hiring
20 me. He thought he could get bigger bonuses if he had a
21 knowledgeable sales guy.

22 Q. So that's what I'm saying. It really boils
23 down to money, not to your race, right?

24 A. No, because Steve made more money. He
25 wasn't -- he wasn't treated as I was.

1 Q. How much money did Steve make?

2 A. I think towards the end, Steve started to make
3 more than Paul, which was probably 160.

4 Q. You say that you think. You don't have any
5 knowledge on that. That's your assumption, right?

6 A. That's my assumption, but it was either close
7 or more.

8 Q. So going again, that's your assumption. You
9 have no personal knowledge about that?

10 A. No.

11 Q. So you can't really say, as a matter of fact,
12 whether Steve ever made more money than Paul, correct?

13 A. No.

14 Q. So going back to the manpower, tell me each of
15 the instances that you had to fight for manpower with
16 dates.

17 A. Obviously, the large FMC project that -- I
18 mean, in some cases, I had six, seven guys. And Steve
19 would make a call for one service call, which was
20 probably a \$2,000 service call, and my project was
21 700,000. And he would go to Paul and pull one of my
22 plumbers or one of my electricians, and I'd have to
23 fight. Like, no, my project dictates the manpower,
24 700,000.

25 Q. I need specific situations with specific dates

1 and specific names. So tell me to the best of your
2 recollection, or if you can't recollect any specific
3 instance, tell me as well. But I need specific
4 instances.

5 A. Well, what I can say -- I can't say specific
6 dates. I can say -- I can say April -- April of '20 to
7 when I left October 26th, there was many instances
8 because that was the largest -- that was the largest
9 project in the department, holding the department up
10 during the Corona. Again, I had the largest project
11 during the Corona.

12 Q. So before we continue talking about this, just
13 to be clear, that's the only specific instance you can
14 recall by date?

15 A. No. I mean, throughout the years, there were
16 many.

17 Q. But the many ones that you tell me, can you
18 recall by date, incident, situation, people or just --

19 A. Okay. In '16, when I had the large Halliburton
20 project that was about \$800,000 also, required many
21 manpower, and it was constant fighting, hey, Steve wants
22 this guy, Steve wants that guy.

23 Q. Okay. So what guy did Steve want?

24 A. Plumbers and electricians.

25 Q. What were their names?

1 A. Shawn Kaufman, Ryan -- I don't remember Ryan's
2 last name. Electricians. I'm not sure of electricians'
3 names. Ed and --

4 Q. So let me ask you this. Are you just naming
5 electricians, or you're naming people that were actually
6 pulled from your project and on Steve's?

7 A. No, pulled from my project, pulled from my
8 project.

9 Q. So John, Ryan and Ed, right?

10 A. John, Ryan, Shawn, Ed. I don't know. I don't
11 think Ed was at that in '16. Ed was at the FMC project.
12 I'm trying to think. Ryan. So these are specific guys
13 that throughout the project -- because again, that
14 project in '16 was about six months. They were pulled
15 various times throughout the project.

16 Q. So let me get this straight. These guys were
17 assigned to your project, correct?

18 A. Yes.

19 Q. And your complaint is that they were assigned
20 to -- when Steve needed them, they were assigned to his
21 project, yet all these electricians were Kilgore
22 employees, I'm assuming?

23 A. Yes, they're Kilgore employees.

24 Q. Okay. And they're hired to work on multiple
25 projects, right?

1 A. Yes.

2 Q. And again, your statement is that in the
3 Halliburton project of 2016, John, Ryan and Shawn at
4 some point in time were pulled from your project to
5 Steve's project, correct?

6 A. Yes.

7 Q. And you claim that this was a discriminatory
8 act, correct?

9 A. Yes.

10 Q. And the only evidence that you have of it being
11 a discriminatory act is the fact that you're Hispanic
12 and you claim that Steve is white?

13 A. Yes.

14 Q. Okay. And, then, the other event with regards
15 to manpower that you specifically mentioned is one from
16 April 2020 to your termination date of October 26, 2020.
17 But you said that it happened there in many instances,
18 but do you recall any specific instances?

19 A. When I say it happened many times, I mean, I
20 can't remember the exact dates. But throughout the
21 years, it would happen so much that I would also try to
22 call technicians off his jobs, and I was email blasted
23 as to no salesman can make a call to pull another
24 technician off another salesman's job without dispatch
25 or a service manager being involved.

1 Now, I was the only salesman blasted in the
2 entire department, when Steve also did it. So I brought
3 on the complaint to Paul, you're being racist. If Steve
4 does it, you need to blast the department also, and he
5 would not.

6 I said here's -- so it wasn't, oh, I'm
7 bringing this after I was terminated. It was many
8 instances where I brought it to his attention, you're
9 being racist. If you're going to blast me, you need to
10 blast him.

11 Q. Then again, the only reason why you claimed to
12 Paul that he was being racist was because Steve was
13 white, correct?

14 A. Yeah. So if it wasn't racism, why was he not
15 blasting him on the whole department when the same
16 circumstance would happen?

17 Q. So when you say you were email blasted, was
18 this email only sent to you? Is that what you're trying
19 to tell me?

20 A. No, no. It was sent to dispatch, supervisors.
21 All the other salesmen were copied. The white
22 salespeople were copied.

23 Q. Okay. So let's talk about that email blast
24 that you're referring to, and in that email, was it sent
25 to all the sales managers or --

1 A. Yeah. It was sent when I did it. When Steve
2 did it, it was not sent.

3 Q. That wasn't my question, Mr. Carmona. My
4 question was -- I'm trying to decipher and establish for
5 the record that email blast that you're referring to. I
6 want to explain to the jury what that email blast was,
7 and let's go one by one.

8 An email was sent, and that email was
9 directed to all sales managers, not exclusively to you,
10 correct?

11 A. Yes.

12 Q. And based on your testimony, that email stated
13 instructions as to what the salesmen -- sales managers
14 had to do to pull technicians from other projects,
15 correct?

16 A. Yes.

17 Q. Did that email specifically mention you, that
18 you could not do that?

19 A. No.

20 Q. Now, again, with regards to the many instances
21 that you talked to me and during 2020, any specific one
22 by date and names that you recall?

23 A. Specific ones by date? What I told you, from
24 April to October.

25 Q. Okay. Many instances, but you can't specify

1 what those instances are, correct?

2 A. No. We had anywhere from four to ten people on
3 that project for -- what is -- April, May, June, July,
4 August, September, October. Six months.

5 Q. I understand. But your testimony would be
6 today -- and correct me if I'm wrong so that this can be
7 clear to the ladies and gentlemen of the jury -- that
8 you cannot specify -- other than telling me that there
9 were many instances, you cannot specify a specific
10 instance by date or by names, correct?

11 A. No, not by --

12 Q. In this 2020 period, correct?

13 A. Not by specific dates, but I can --

14 Q. So let's talk about the next allegation that
15 you've made. So the next one was being blasted on
16 emails, which we've talked a little bit about now. So
17 the email blast that you referred to sent out with
18 instructions to all sales managers, would that be this
19 instance that you mentioned?

20 A. Uh-huh.

21 Q. Yes?

22 A. Yes.

23 Q. No other instance of email that was blasted
24 that you're claiming?

25 A. No. That's my point. I was the only one

1 blasted while the other white salespeople --

2 Q. Not my question, Mr. Carmona. My question, in
3 this allegation that there were emails blasted, we've
4 already talked here about one that was directed at all
5 sales managers, not specifically towards you, with
6 instructions as to how to pull technicians from a
7 project.

8 Besides that email that we've already
9 discussed here today, was there any other email that
10 you're claiming that was blasted?

11 A. That was just done to me.

12 Q. So this one is the only incident, correct, with
13 regards to this?

14 A. No. It was only done to me when I did it.

15 Q. I understand that. That's your allegation. My
16 question is, were there more emails than the one we've
17 just talked about?

18 A. Yes. That's what I'm saying. When I opted to
19 try to pull a salesman, a technician, it was -- the
20 blast was only done when I did it. So there was -- the
21 email blast was probably sent, in a matter of a year,
22 five times, but the battle between me and the other guys
23 was constant.

24 Q. Okay. So when were these five emails sent?
25 Tell me.

1 A. They were probably sent more in '19 and '18.

2 Q. Okay. When you say there were probably more
3 sent, you really don't know when they were sent,
4 correct?

5 A. I don't know the specific month or date, but I
6 know that they were sent.

7 Q. So if you don't recall the specific month or
8 date when they were sent, how do you recall that these
9 pertained to you and they were directed at you even
10 though they didn't mention your name and were sent to
11 all other service managers?

12 A. Well, because the moment they were sent,
13 I (audio distortion) --

14 Q. I'm sorry. It's cutting out.

15 A. (Audio distortion).

16 Q. I'm sorry. Can you repeat that? It's
17 cutting -- breaking up.

18 MS. ALFARO: Is it breaking up for all of
19 you?

20 THE REPORTER: Yes.

21 MR. HODGES: Yes.

22 Q. (BY MS. ALFARO) I think it's frozen right now.
23 Mr. Carmona? Mr. Carmona, can you hear me?

24 A. Yes.

25 Q. Okay. So you were breaking up for all of us,

1 so we couldn't get that last response that you gave.
2 And my question was, how do you know that those emails
3 that you don't recall a date on that were sent to all
4 service managers, with no specific mention of your name,
5 were directed at you?

6 A. Because they were -- they were sent after we
7 had a disagreement over manpower, when I had
8 disagreements.

9 Q. Okay. So when did you have these disagreements
10 over manpower so that I can identify when the emails
11 were sent?

12 A. Between '18 and '20.

13 Q. You can't give me specific dates or specific
14 projects or specific people or specific instances,
15 correct?

16 A. No. If Paul could release them emails, you can
17 get specific dates.

18 Q. Mr. Carmona, my question is, you -- you, who is
19 bringing this claim, cannot give me specific dates or
20 names or times or projects with regards to --

21 A. I don't -- I don't --

22 Q. Let me answer -- let me finish my questions.

23 A. I don't have access to the server.

24 Q. Let me finish my questions. I'm going to
25 repeat it again.

1 A. It's breaking up, so that's --

2 Q. Okay. Can you hear me?

3 A. I can hear you now.

4 Q. Okay. You have to listen to my question and
5 let me finish my question. It helps you and it helps me
6 to have a clear record. When we talk over each other,
7 it's very hard for the court reporter to transcribe. So
8 let's just be patient. Okay?

9 A. Okay.

10 Q. My question is the following: Is it correct to
11 say that you don't have specific dates, nor specific
12 disagreements, nor specific projects, nor specific
13 people that you can mention to me with regards to these
14 emails that you claim that were sent against you? Is
15 that correct?

16 A. If Paul can release the emails, we can get
17 specific dates. I don't have the dates in front of me.

18 Q. My question has nothing to do with Paul,
19 Mr. Carmona. You have to answer my question because
20 you're certainly listening to them and understanding
21 them.

22 My question is, do you, Mr. Rudy Carmona,
23 have any dates or people or disagreements or --

24 A. Okay.

25 Q. -- specifics -- you've got to let me finish --

1 regarding these emails that we were talking about? If
2 the answer is yes, it's yes, and if the answer is no,
3 it's no.

4 A. I can have dates if I can access the project
5 files.

6 Q. So currently, you have no dates, and currently,
7 you have no specific information?

8 A. No, because I don't have access to the server.

9 Q. Okay. So that means that currently -- and
10 again, you have to answer my questions. It's part of --

11 A. I am answering because I would have to --

12 Q. No. But my question is currently, you have no
13 information, specific information, correct?

14 A. I don't have information because I don't have
15 access to the server.

16 Q. So, therefore, you don't have information --
17 this claim that you're making with regards to these
18 emails is speculative?

19 A. No. If I have access to the server, it would
20 not be speculative because I could point it out. I gave
21 you the months when the projects were there. Throughout
22 the projects --

23 Q. Exactly my point, exactly my point. Since you
24 don't have that information, the information that you're
25 providing me is speculative, correct?

1 A. If my counsel can ask for the --

2 Q. Mr. Carmona, I'm asking --

3 A. -- for those to be released, then I can give
4 you specific dates.

5 MS. ALFARO: Is it breaking up for
6 everybody?

7 THE REPORTER: Yes.

8 THE WITNESS: It's breaking up.

9 Q. (BY MS. ALFARO) Yeah. I can hear you now, but
10 everything that you said was broken up for all three of
11 us. I think it's frozen again.

12 A. Can you give me two minutes?

13 MS. ALFARO: Sure. Let's take a
14 five-minute break.

15 (A recess was taken.)

16 MS. ALFARO: Okay. Are we ready to go back
17 on the record?

18 THE WITNESS: Yes.

19 Q. (BY MS. ALFARO) Mr. Carmona, I'm going to
20 remind you that you're still under the oath that you
21 took this morning. Okay?

22 A. Yes.

23 Q. So I'm going to continue on the line of
24 questions regarding discrimination, but I have just a
25 couple of questions I want to clarify some things on.

1 This employee that you mentioned by the name of Thanm,
2 he did not have your same position at Kilgore, right?

3 A. In the hierarchy that Kilgore presented, we
4 were the same.

5 Q. His --

6 A. But a different position.

7 Q. Okay. So he had a different position?

8 A. Yes.

9 Q. And Thanm and yourself did not have exactly the
10 same tasks, duties or responsibilities, correct?

11 A. Correct.

12 Q. Earlier during this deposition, you mentioned
13 John Bussleman, correct?

14 A. Yes.

15 Q. And has he provided you with a written
16 statement with regards to this case?

17 A. A written statement, no.

18 Q. Let me ask you this. Since your termination
19 from Kilgore, have you spoken with Steve Saitas?

20 A. No.

21 Q. Since your termination from Kilgore, have you
22 spoken with Craig Cannell?

23 A. No.

24 Q. Okay. Let's go back. So the next allegation
25 of discrimination that you testified previously about

1 was about quotas, so tell me about that. What happened
2 with your quotas?

3 A. I was constantly being told each year that my
4 quota was going to be increased because I was
5 outperforming my quotas, and I said, you know, that's
6 not fair because Steve is not -- his quota's not being
7 increased. And I specifically asked for proof if it was
8 because we started on the same date, March 18, 2013, and
9 he is white.

10 Q. So your testimony is that Kilgore never
11 provided you with evidence of Steve's quotas being
12 increased, correct?

13 A. Correct.

14 Q. Did you ever see any quota documentation with
15 regards to Steve while you were there?

16 A. No, but he -- I was very adamant and I --
17 again, I started the race conversation way back when,
18 you're being racist, Paul. If you can't provide the
19 documentation, then you're being racist, and why is it
20 being done to me.

21 Q. Let me ask a question. Not providing you
22 confidential and private employee information with
23 regard to another employee, do you consider that to be
24 racist?

25 A. If you can't be transparent in a request, then

1 I think, yeah, it's being racist.

2 Q. So do you think that a company has an
3 obligation to show employees what their other employees
4 earn or the compensation or the quotas? Do you think
5 that's an obligation the company has, to share with
6 employees private, confidential information?

7 A. It's not private because he presents it -- he
8 presents the year one -- year one employees' quota, year
9 two employees' quota, year three. And I said, okay,
10 we're the same year, so provide me the proof. Show
11 it -- year one, year two, year three, how the quotas
12 increase, but mine were drastically increasing, not
13 matching what he was presenting.

14 Q. So the question was --

15 A. So it was public knowledge --

16 Q. -- you're requesting that the company provide
17 to you specific compensation information with regard to
18 a specific employee, and my question is, do you think
19 that that is an obligation the company has, to show what
20 their other employees are or aren't requested to sell?

21 A. Yes.

22 Q. And if a company does not show you that
23 information for another employee when you request it,
24 you believe that to be racist?

25 A. Yes. Can I elaborate why?

1 Q. No. There's no question on the table.

2 A. Okay.

3 Q. So with regards to this specific allegation or
4 quota, that yours were being increased constantly while
5 Steve's -- you never saw proof of Steve, other than not
6 seeing proof of what Steve's quotas were, do you have
7 any other evidence of discrimination with regards to
8 quotas?

9 A. Yes. So to -- when I say Steve was starting to
10 make a -- make a run for trying to beat my seven-year
11 number one, during '18 or '19, when his DaVita account
12 started to take traction, Paul would present all the
13 sales team with here's where you're at, a chart, but
14 would not highlight each other's name, right? So it was
15 almost like parading the fact that Steve's going to beat
16 me this year.

17 The moment I took -- the moment I regained
18 my number one, the bar and the spreadsheet was not
19 emailed no more. So it was almost like, yeah --

20 Q. I'm so sorry. Your testimony's cutting up on
21 my end.

22 MS. ALFARO: Is it cutting up on the court
23 reporter's end?

24 THE REPORTER: Yes.

25 Q. (BY MS. ALFARO) Okay. I'm sorry. Because we

1 couldn't catch all that you were saying, could you
2 repeat that, please?

3 A. Okay. 2018 when Steve Saitas was making a run
4 to be number one, there was a bar chart that was being
5 emailed that would only show your name, but it would not
6 show the others. And obviously, it was more to try to
7 get competition between sales guys, but the moment,
8 again, before Rudy Carmona took number one over at the
9 end, the chart and email was not sent out no more.

10 Q. So I don't understand. How was this
11 discriminating against you?

12 A. Well, how come when I took number one, the
13 chart wasn't continued to be shown?

14 Q. Again, my question, why do you claim this to be
15 discriminatory against you? How did it affect you?

16 A. When I was number one, why was it not presented
17 as me being number one again? You started the chart in
18 the beginning of the year.

19 Q. And again, I'm trying to understand, but I'm
20 not. So how does not presenting the chart when you're
21 number one affect you, grossly affect you in your
22 employment?

23 A. How does it affect me? Because the moment I
24 took number one, he did not want the rest of the team to
25 know I was number one again. Why? You started the

1 chart in the beginning of the year.

2 Q. Okay. And again, how does this affect your
3 employment, other than the others not knowing that
4 you're number one?

5 A. It is demoralizing because you don't want to
6 show the guy that has been number one over the past six
7 years, about to take it a seventh year. Why don't you
8 want to show it?

9 Q. And how do you know you were number one all
10 those years? Were you told that information?

11 A. Yes. I was told by Paul. Of course, other
12 departments knew it. Other department VPs knew it
13 because they did not like that a sales guy was making as
14 much as a vice president of other departments, so -- and
15 Ken Kilgore said, I pay you too much in front of a
16 vendor.

17 Q. I have a question. Based on your testimony,
18 this company was doing all these things against you. It
19 clearly seems you were not happy. Why stay in there all
20 those years?

21 A. It was my first sales job. I was doing real
22 good, being compensated, but I had established a
23 relationship with my customers.

24 Q. So you stayed because you were doing real good
25 and you were getting compensated?

1 A. Yeah, but it was a constant battle to fight for
2 what I've earned.

3 Q. Okay. The next allegation you mentioned with
4 regard to discrimination was that your sales plan was
5 changed. I believe you told me earlier that there was a
6 year that the plan -- or there was a moment in time that
7 the plan was changed for everybody, right?

8 A. Yes.

9 Q. Okay. So let's talk a little bit about that.
10 When was the sales plan changed?

11 A. In '16 is when it was drastically changed from
12 the sales -- the salesman would take 50 percent of the
13 profit after overhead cost. Then it was reduced to
14 20 percent.

15 Q. And was this change in the compensation plan in
16 2016 done across the board, meaning to all the
17 salespeople?

18 A. Yes.

19 Q. That would include the white folks and
20 yourself?

21 A. Yes.

22 Q. How do you claim that this is discriminatory?

23 A. Because I was the only one brung into a
24 meeting, specifically told, you know, you're -- you are
25 gouging the customers, so we have to change the plan.

1 Then the other sales guys got mad at me
2 because I'm -- I was -- I was accused of gouging. So
3 they're all mad at me, and then they realized they
4 shouldn't be mad at me because I'm just experienced in
5 managing projects to bring in high margins.

6 Q. So the change was because you were making more
7 money, right?

8 A. Yes, because they were used to sales guys
9 selling 1.2, and I was selling 2 and 3 million. They
10 had never had a sales guy sell 2 or 3 million.

11 Q. Would you agree with me that this change in
12 sales plan that affected everybody really had to do with
13 the fact that you were making more money and not your
14 race?

15 A. That I was making more money?

16 Q. Uh-huh, and not your race.

17 A. Well, I think -- I think it was -- I think it
18 was both because Steve started to make more money, but I
19 was the only one brought into a meeting.

20 Q. How much money was Steve making in 2016? How
21 much more money was he making in 2016?

22 A. Well, I think his -- I think his salary was
23 only 50,000, and I think he was making a hundred, 90 to
24 a hundred while I was making 150 to 160.

25 Q. You were considerably making more in 2016 than

1 the white guy, weren't you?

2 A. Yes.

3 Q. And your salary or your draw was considerably
4 higher than the white guy's, right?

5 A. In '16, I think my -- yeah, but you have to
6 count my experience. So I think my salary in '16 was
7 60, and his was 50.

8 Q. So my question still remains the same. In
9 2016, your salary was higher than the white guy's
10 salary, Steve's, correct? I think you froze.

11 Mr. Carmona?

12 THE REPORTER: Uh-oh. Maybe he'll log back
13 in.

14 MS. ALFARO: Let's give him a couple of
15 minutes. He's been struggling, I think, with his
16 signal.

17 THE REPORTER: I guess we're off
18 officially, right?

19 MS. ALFARO: Yeah. I guess till the
20 deponent comes back, I can't do anything else.

21 (A recess was taken.)

22 THE REPORTER: Do you want me to read the
23 last question back that he -- we lost him before he gave
24 an answer.

25 MS. ALFARO: Yes, please.

1 (Requested text read)

2 A. Yes.

3 Q. (BY MS. ALFARO) The last allegation of
4 discrimination that you mentioned to me earlier today
5 was that in December 2016, you were asked to negotiate
6 your commission and then reduce it. Can you explain
7 that to me a little?

8 A. Okay. So there was a -- there was a project
9 that performed at a certain percentage of profit, and
10 this -- this is why it was very frustrating. It was not
11 for the entire sales plan. It was just for this one
12 payout.

13 They manually entered percentages in a
14 spreadsheet of what they thought I should get paid,
15 which is I feel based off -- we have a sales plan in
16 writing, and they doctored -- they doctored the plan,
17 manually entering and violating labor laws.

18 Q. Okay. Now, let's break this down. What
19 project was this?

20 A. It was for Halliburton.

21 Q. Okay. And this was in 2016, correct?

22 A. Yes.

23 Q. Okay. And what was your sales plan on
24 commission or incentive at the time, percentage?

25 A. At the time, it still should have been

1 50 percent of net.

2 Q. Okay. And what did they manually try to reduce
3 it to?

4 A. They tried to -- they tried to reduce the
5 percentage. Instead of 50 percent -- so they did two
6 things. They adjusted the overhead higher, which
7 would -- which would reduce my net.

8 And then they reduced my net. Instead of
9 50 percent, they reduced it to -- I don't know. I don't
10 remember what it was. I have the document. I sent it
11 to my counselor.

12 Q. Okay.

13 A. Because it was an email. So I forwarded the
14 email showing the spreadsheet breakdown.

15 Q. So when you talk about making the overhead
16 higher, were there caps or minimums to overhead that
17 would be deducted from the profits? Is that how it
18 worked?

19 A. Yeah. So there was a sliding scale. The
20 larger the project, the lower the overhead cost, so --
21 and this is according to their document. That size of
22 project, I should have been getting a 12 percent
23 overhead. I think he increased it to like 16,
24 18 percent, which we had a document, sliding scale, as
25 they called it, in place, and he manually adjusted it.

1 Q. Do you know how much you made with Kilgore in
2 2020?

3 A. I'd have to get my tax statement.

4 Q. Give or take. It doesn't have to be an exact
5 amount.

6 A. I think less than a hundred because I was not
7 given my last two -- I was not given my October,
8 November or December -- well, I wasn't there December,
9 but the statements are run every month, and according to
10 when the jobs get paid.

11 Q. So do you recall, give or take, what you made
12 with Kilgore in 2019 which you worked a complete year?

13 A. Yeah. I think it was like 160, 70.

14 Q. Okay. So now that you're on your own, you told
15 me this last year, 2021, you made 600,000 net. You're
16 making considerably more than you ever did at Kilgore,
17 correct?

18 A. Yes.

19 Q. Okay. In going back to this commission and the
20 project of Halliburton and reducing the percentages, who
21 manually -- when you say manually entered, do you mean,
22 like, handwritten manually, or you mean somebody altered
23 the statement?

24 A. No. He pulled up a spreadsheet, had the
25 spreadsheet where -- a Microsoft spreadsheet where he

1 enters the amounts, enters the percentages, and then it
2 spits out, you know -- you know, a Microsoft
3 spreadsheet, right?

4 Q. Uh-huh.

5 A. Enter the cost, enter the overhead. He
6 manually entered it showing this is the breakdown and
7 said here's what we think that you should get paid.

8 Q. Okay. And when you say he, you mean Paul?

9 A. Paul, yes.

10 Q. You also mentioned -- you keep mentioning --
11 you use the word "doctor a document." Is that the word
12 you're using?

13 A. Yes.

14 Q. And what does that mean to you?

15 A. That means he -- in the email, he even shows
16 the outline of what I should get paid, which is -- I
17 don't even know why he did that. It shows what a
18 \$200,000 job should be charged in overhead, but in
19 the -- in the breakdown, he highlights it. We're not
20 charging you 12. We're going to charge you whatever it
21 was, 16, 18 percent. We're going to charge you higher.
22 And it's not going to be 50 percent net; it's going to
23 be this, and it's highlighted.

24 Q. And then you talked about violating labor laws.
25 What labor laws are violated and why?

1 A. Because he's -- he's forcefully changing my
2 commission plan.

3 Q. Was your commission plan discretionary?

4 A. No. It was -- it was based off the document,
5 off the sales plan.

6 Q. Do you know if that sales plan has any language
7 that the plan can be amended at any time?

8 A. No.

9 Q. You don't know that it has that language, or it
10 does not have that language?

11 A. I don't know if it has that language.

12 Q. Do you know if your employment with Kilgore was
13 at will?

14 A. No, I don't know.

15 Q. Do you know what at will is?

16 A. No.

17 Q. Okay. I have a couple more questions. One of
18 the claims that is made in the complaint is that you
19 were retaliated against. How were you retaliated
20 against?

21 A. How was I retaliated against?

22 Q. If you know. If you don't know that you were
23 retaliated, just let me know.

24 A. No. Yeah, I specifically know that -- again,
25 the retaliations were withholding my commissions when

1 they were large, struggles with manpower,
2 specifically -- specifically told to my face that he
3 wanted to fire me. Withholding -- well, that was done
4 to everybody, but --

5 THE REPORTER: Okay. There's another
6 Eddie Hodges, Junior coming in.

7 MR. HODGES: Yeah. It's my computer. I
8 may have to show a document or two as well.

9 THE REPORTER: Okay.

10 Q. (BY MS. ALFARO) Okay. Mr. Carmona, you can
11 continue.

12 A. I'm trying to think, to be specific.

13 Oh, okay. This was a battle for two or
14 three years. Part of our sales plan for the -- remember
15 I said it was in three portions, the projects, the T&M
16 and --

17 Q. Mr. Carmona, you froze up again. We couldn't
18 hear you.

19 A. -- with his quote, and this is -- this is
20 specific to the T&M portion of our sales plan.

21 Q. We can hear you now --

22 A. Can you hear me?

23 Q. -- but we didn't hear anything of your previous
24 statement.

25 A. Okay. In retaliation, it was specific between

1 me and Steve, and this was a battle that was very
2 highlighted for about two or three years. In the
3 breakdown of the commission between projects, T&M and
4 service, Steve would write hand notes, hand notes,
5 scribble scratch on a piece of paper what his quote was
6 for a specific customer. If I had a quote on a Kilgore
7 letterhead, then it was considered T&M and not a quote.
8 Okay?

9 Steve would not provide a quote on a
10 letterhead. He would provide it on a piece of paper.
11 Now, that percentage was vastly different, two percent
12 versus 10 percent. And I would always tell Paul, you're
13 being racist, Steve does not provide these quotes to
14 DaVita on a letterhead. You're making me do it. Steve
15 does not. Okay? I'm going to take this to ownership
16 because that drastic difference of two or 10 percent on
17 T&M is important.

18 And Paul's response, well, he got -- he's
19 got to do a bunch of them a day. I said, well, it's not
20 my fault that my projects are larger, but you are asking
21 me to spend time and put my quote on the letterhead
22 while he scribbles it on a piece of paper. So I'm
23 treated different. I'm retaliated against.

24 Q. What is your definition of retaliation?

25 A. Meaning I do something and he does something to

1 hurt me.

2 Q. What is it that you do that he does to hurt
3 you?

4 A. He made it hard for me to gain my commissions,
5 like that instance right there. So if Steve has to do
6 20 quotes on a piece of paper, but I have to sit in
7 front of a computer and I have to do 20, the time
8 difference is he can write them out in five minutes, and
9 I have to take hours to do it when it's the same thing.
10 It's a quote.

11 Q. I understand, but the reasons as to why Paul
12 was making you do this differently --

13 A. He was making it harder. He was harassing me,
14 making my time harder.

15 Q. You've got to let me finish. Okay?

16 A. Okay.

17 Q. My question is, you claim Paul was making it
18 harder on you to do all these things, and my question
19 is, why do you claim that Paul was retaliating against
20 you? What did you do that he wanted to retaliate?

21 A. I was making more money than him, so he wanted
22 me out.

23 Q. Okay.

24 A. By making my job harder, he wanted me out.

25 Q. So withholding your commissions when they were

1 large, it was because -- it was all because of money,
2 correct?

3 A. Race and money.

4 Q. How did race play a part in it?

5 A. Why wouldn't he hold the white guy's money?

6 Q. So that's your only evidence of discrimination
7 with regards to withholding?

8 A. No. I just told you about the quotes, too, and
9 the manpower.

10 Q. Okay. How do you claim that Paul retaliated
11 against you with the struggles with regards to manpower?

12 A. Again, I have -- and this was very visible
13 during the Corona because, like I said, apart from me
14 holding up the department, I have an \$8,000 project and
15 Steve has a \$200 service call, why are you pulling
16 manpower from my project.

17 Q. You claim that that happened because of
18 discrimination, not retaliation, correct?

19 A. Both.

20 Q. So what did you do that you claim you were
21 retaliated against with regards of the manpower? You're
22 muted.

23 A. What did -- say it again.

24 Q. What did you do that made Paul retaliate
25 against you?

1 A. I didn't do nothing. I did my job.

2 Q. Let's talk about the wanting to -- telling you
3 that he wanted to fire you. When exactly did Paul tell
4 you that he wanted to fire you?

5 A. Well, it started in '16 when the conversations
6 started to get bigger because we had a very difference
7 in opinion of managing projects and managing customers.
8 So there was -- there was constant battles.

9 Q. And I'm hearing kids.

10 A. Yeah. Let me -- my daughter's in the
11 background. Let me tell her.

12 (A recess was taken.)

13 A. Okay.

14 Q. (BY MS. ALFARO) Okay. So you were telling me
15 that in 2016, the conversation started to get higher --
16 there was difference of opinions as to how to manage the
17 projects, and the billing and all of that was Paul,
18 so --

19 A. Yes.

20 Q. So my question was, when specifically did Paul
21 tell you that he wanted to fire you?

22 A. '16, '17, '18, or pretty much every year.

23 Q. Okay. So in 2016, when specifically, what
24 months did he tell you he wanted to fire you?

25 A. Probably December.

1 Q. When you say probably, do you know that it was
2 in December, or are you assuming?

3 A. Well, it was around the time of that vast, big
4 fight over that one job. So I can say December,
5 January. That was the first time.

6 Q. And that was because of money, you've explained
7 to me, right, you would make more money than he would?

8 A. Yes, which was -- which falls into the racism
9 and harassment. He's harassing me over my compensation.

10 Q. Let's get something straight. You're telling
11 me it's about money, it's about you making more money.
12 How does that jump into discrimination?

13 A. Because, like I said, I think Steve was making
14 more than him also.

15 Q. But we've established that you don't know.
16 You're assuming that?

17 A. I don't know unless they turn over documents.

18 Q. So for you to claim that this didn't happen to
19 Steve, you would have to speculate because you don't
20 know right now and you've never known?

21 A. I'm only speculating on the words out of Paul's
22 own mouth that he said that he thinks he would make more
23 than him also that year. But that was not towards the
24 end of the year, so they were not -- is concrete.

25 Q. Paul's statement was not concrete; therefore,

1 your statements are speculation, right, and they are
2 still speculation because you have no evidence of Steve,
3 the white guy, that you claim making more money than
4 Paul?

5 A. No. This was not speculation because it was
6 told out of his mouth, but the year was not over.

7 Q. Okay. So therefore -- so at the end of the
8 year, when you're claiming that you're having this fight
9 and Paul is telling you that he's going to have you
10 fired, and you told me it was because you were making
11 more money than Paul, you really don't know that that
12 has to do with discrimination. You're assuming it has
13 to do with discrimination?

14 A. Well, I'm assuming because Steve was assumed to
15 make more money. He was not nowhere near treated like I
16 was.

17 Q. And in 2017, when did Paul -- when specifically
18 did Paul tell you he wanted to get you fired?

19 A. Probably after the meeting we had with Jeff
20 Kilgore where --

21 Q. When you say probably, do you specifically
22 recall, or are you speculating?

23 A. No. I specifically recall because we had a
24 meeting where I basically embarrassed him in front of
25 ownership with regard --

1 Q. What happened in this meeting in 2017?

2 A. It was -- it was still -- I was still upset
3 about the sales plan change, and from December -- I
4 think Paul did not outline the specifics of the sales
5 plan until about June. So maybe March or April, I
6 demanded a meeting where we had a meeting with
7 ownership, me, Paul and Jeff Kilgore, and I ran four
8 sales -- I ran four statements, my T&M, my projects,
9 this.

10 When we entered the meeting, Paul entered
11 with nothing, and I entered with four reports, put the
12 four reports on the table and said, according to this
13 report -- and Jeff asked who ran these reports. I said,
14 these were reports that Paul ran. I can't run them.

15 The reports show that I'm 200 percent of
16 sales plan. I'm doing this. I'm averaging this
17 percentage. Why are you choosing to change the plan
18 rather than reward me when I have proven my ability to
19 perform, which, of course, Jeff sided with the fact that
20 the plan was changed because we're not keeping up with
21 how well you're performing, which is BS.

22 But, then, he also acknowledged and
23 embarrassed Paul by saying, Paul, I think you need more
24 self-performers like Rudy that have the background and
25 the experience, and you have too much overhead, meaning

1 you have sales guys that do not have the experience I
2 have to walk jobs alone so that other salespeople needed
3 support from the service manager, technicians.

4 So the more people we had back there, which
5 was what my argument was in the meeting, you are making
6 a statement that I am hurting the financials when the
7 financials are being hurt because you have too much
8 overhead.

9 So ownership, Jeff Kilgore, told Paul, I
10 agree with Rudy. You have too many inexperienced people
11 that need resources to do what Rudy does. Rudy does the
12 job of three people. You need more people like Rudy.

13 Q. So Jeff Kilgore backed you up, right?

14 A. Partially.

15 Q. Oh, okay.

16 A. He acknowledged my -- my understanding that the
17 overhead was the main issue, not that I had large
18 payouts. But again, Jeff Kilgore's greedy. He still
19 said, we need to change the sales plan.

20 Q. You said because Jeff is greedy?

21 A. Yes.

22 Q. Okay.

23 A. Rather than opt to say, you know what, we need
24 to reward the guy that's performing, no, we're going to
25 change the plan because we don't care. We're still

1 going to take money from him.

2 Q. So you didn't like Jeff's reaction to all of
3 this?

4 A. No, and I made it very clear. I told him it
5 was unfair.

6 Q. And this plan in 2017 was changed across the
7 board, right?

8 A. Yes.

9 Q. You weren't the only one affected by the
10 change?

11 A. I wasn't the only one, but I was the one that
12 it -- I was the one that was being as the scapegoat,
13 it's because Rudy is gouging.

14 Q. Well, let's talk about that. You say you were
15 being the scapegoat, yet this change in the plan that,
16 pursuant to your allegations, lowers your income,
17 lowered the income as well of the other three white
18 individuals that held your same position and were under
19 the same changed plan, correct?

20 A. Correct.

21 Q. So how can you claim that this was
22 discriminatory if the other -- everybody was under the
23 same change and the rest of the folks under the change
24 were white, not Hispanic?

25 A. Because I was the only one that was told that I

1 was gouging.

2 Q. And Paul was the one that told you he claimed
3 that you were gouging clients, right?

4 A. Paul was told -- yes. Paul told me what he was
5 told, that he was told by ownership.

6 Q. Okay. Any other instance you recall Paul
7 telling you -- well, strike that.

8 So after this meeting with Jeff, Paul told
9 you that he wanted to fire you?

10 A. Yes. So let me ask you this.

11 Q. No. Wait. Immediately after this meeting, did
12 Paul tell you -- this meeting with Jeff, did Paul tell
13 you that he wanted to fire you?

14 A. I can't -- I can't -- no, not immediately. It
15 was several weeks after.

16 Q. When exactly did Paul tell you in 2017 that he
17 wanted to fire you?

18 A. It was probably, like, in June.

19 Q. What specifically did he tell you?

20 A. That -- he specifically said if it -- he said
21 he's never had a sales guy as experienced as me, that I
22 can probably go down to Jeff Kilgore's office and
23 complain and he would probably give me the VP position.
24 So if I -- if I -- if there's any chance for me to mess
25 up, he's going to fire me. Can you imagine being told

1 that by your superior?

2 Q. He told you this because of the money you were
3 making, you had stated before, right?

4 A. Well, yeah, it's the money. But can I add to
5 the retaliations? You said if I remember anything --

6 Q. Yeah, sure.

7 A. Okay. So part of the retaliation after '16,
8 because I embarrassed him with all the reports I showed
9 up and he had nothing to show for it in the meeting, the
10 metrics was changed of the sales plan. Let me explain
11 the metric.

12 So a \$1.2 million quota. The metrics was
13 actual math. Okay? So 80 percent of my projects and
14 20 percent was maintenance. Okay? And that was actual
15 math.

16 He changed the metric because my projects
17 were so vastly -- you know, two million, you know, so it
18 showed my quota to be 200 percent of plan. He changed
19 the metric to say now the 200,000 reflected to be
20 50 percent of my plan -- of maintenance, but every sales
21 guy knows, you get money on projects, not maintenance.

22 Even though -- even though -- even though I
23 had a half a million dollar book of business in
24 maintenance, which was probably five times more than the
25 second guy, but he changed the metric so that if we ever

1 had a meeting again, I would not show that I was holding
2 up my quota. So it's a doctored matrix, meaning how
3 does 200 percent -- how does 200,000 make up 50 percent
4 of my three million? That doesn't make sense.

5 He retaliated so that if he was to ever
6 present where I'm at on my quota, I would show that I'm
7 not a hundred percent of my quota.

8 Q. And your claim is that Paul retaliated against
9 you because you went to Jeff to complain about numbers
10 and money, correct?

11 A. Uh-huh.

12 Q. Okay. Now, you've talked a couple of times
13 about T&M. What's that?

14 A. Time and material.

15 Q. Now, let's go back for a minute to your
16 diagnosis of Bell's palsy. Can you explain to the
17 ladies and gentlemen of the jury what that diagnosis is
18 and means?

19 A. So it's a paralysis of half your face that
20 affects your nerves that controls your mouth, nose and
21 eyes and ear, and the official -- the official
22 explanation, that is, you can Google it, is caused by
23 either a virus or stress.

24 Q. Okay. So --

25 A. So that --

1 Q. There's no question pending. With regards to
2 the paralysis of half of your face, you currently have
3 no paralysis in your face, correct?

4 A. Currently, now?

5 Q. Yeah.

6 A. No. I still have -- how do I say it?
7 Permanent damage from the Bell's palsy.

8 Q. What is the permanent damage?

9 A. I have -- there's nerve damage. My eye is
10 drastically, drastically more sensitive in my left eye,
11 and my eyesight has drastically changed.

12 There's -- obviously, as a reaction, when I
13 do get very stressed, my left eye begins to twitch, and
14 if you Google -- you Google, there is and can be
15 permanent damage that will never be changed. In some
16 people, the paralysis is permanent, but there's also
17 permanent effects to, obviously, my sensitivity in my
18 left eye drastically.

19 Q. Your paralysis was not permanent, correct?

20 A. No, but there -- there is a --

21 Q. I have no -- I have not asked a question.

22 And that's good, right? I mean, you must
23 be glad that your paralysis was not permanent, right?

24 A. Yeah. Now, paralysis meaning full paralysis.
25 There's partial still. There's partial.

1 Q. Now, when did the full paralysis, thankfully,
2 end for you?

3 A. Well, it didn't end. Again, the full paralysis
4 has never went away. I mean, I still have -- my left
5 eye is slightly sleepy. Okay? There's still -- my left
6 eye is drastically drier, meaning I have to have more
7 drops. So it never fully went away.

8 Now, did I recuperate maybe 80, 90 percent?
9 It took about six months.

10 Q. So you were still working at Kilgore when 80,
11 90 percent recovery occurred, right?

12 A. Yes.

13 Q. And let me ask you something. I know that
14 you've told me you're making way more than you ever made
15 at Kilgore, so would it be correct to assume that Bell's
16 palsy has not affected in any way, shape or form any
17 major life activity? I mean, you can work, can do
18 everything even better than before?

19 A. No. I can't say better than before. It's
20 affected my eyesight. I can't read a menu in a
21 restaurant.

22 Q. How old are you?

23 A. Forty.

24 Q. What doctor treats you for this?

25 A. I've only -- when it happened, I went to two

1 doctors, Saint Luke's, and I went to Spring Creek --
2 Spring Creek Neurologist to get the -- to get the
3 understanding of the nerve damage, and then I had an MRI
4 at Memorial.

5 Q. When was the last time you visited a doctor
6 with regards to your Bell's palsy diagnosis?

7 A. Oh, yeah. It's been -- I think the last time
8 was in '19, when I went to the neurologist, but I've
9 been meaning to go to an eye doctor to see how bad it
10 is.

11 Q. So wait a minute. Since 2019, you haven't been
12 to the neurologist. So let me ask you, since 2019, have
13 you seen an eye doctor?

14 A. No. I went to what you call a naturopath,
15 where she's the one that said I had -- what's that gray
16 stuff in the eye called?

17 Q. No idea.

18 A. Anyway --

19 Q. So even though you've been told that you have
20 something in your eye since 2019, you've done nothing
21 about it?

22 A. No.

23 Q. And you are working and living and breathing,
24 and nothing major in your life has changed for you other
25 than knowing that your eyesight is not great and not

1 being able to read a menu at a restaurant, correct?

2 A. Yeah, but I've been meaning to go.

3 Q. But even though you've been meaning to go for
4 the last three years, you haven't gone to a doctor,
5 eyesight doctor, correct?

6 A. Correct.

7 Q. Okay. Other than your eyesight and reading a
8 menu, anything else that your current situation limits
9 you in?

10 A. Yes. It affects my left eye. As you can tell,
11 I'm rubbing it because it's irritated.

12 Q. So it affects your left eye, meaning it gets
13 irritated?

14 A. Yeah, very dry, drastically drier.

15 Q. Does that irritation limit any of your major
16 life activities like walk, breathing, eating, listening?

17 A. I think it affects my driving.

18 Q. You cannot drive?

19 A. I can drive, but knowing my vision is different
20 can -- can be -- can be dangerous as this continues to
21 get worse.

22 Q. And even though you know it could be dangerous,
23 since 2019, you have not decided and opted not to visit
24 an eye doctor, correct?

25 A. Not that I've not decided. I've tried to make

1 appointments, but with me trying to --

2 Q. What has happened? I mean, you've tried to
3 make appointments? You've called?

4 A. Yes.

5 Q. And what has happened?

6 A. Well, some -- during the Corona, some of the
7 doctors were -- some of the doctors were closed.

8 Q. But they did teledoc visits or virtual visits?

9 A. No. I didn't schedule a virtual visit. They
10 can't see my eye on a virtual visit. But, yes, I have
11 not -- I've tried, but knowing this is going on and this
12 needs to be documented, I will.

13 Q. How many times have you tried to make an
14 appointment with an eye doctor?

15 A. In the last three years, probably three or four
16 times.

17 Q. And what has happened? So you mean to tell me
18 that those three or four times, doctors -- you've not
19 been able to do an appointment or doctors have canceled
20 or what?

21 A. No. There was twice that I canceled because of
22 work and family.

23 Q. And the other two times?

24 A. I think one time, I had realized that that
25 doctor had recently decided to close during the

1 pandemic, and I don't remember the fourth time.

2 Q. At any point in time during your employment
3 with Kilgore, did you request accommodation for your
4 Bell's palsy?

5 A. Accommodation?

6 Q. Uh-huh. No?

7 A. No.

8 MS. ALFARO: I think I'm done, but let's
9 just take a five-minute break so I can review my notes
10 and we can come back.

11 THE WITNESS: Okay.

12 (A recess was taken.)

13 MS. ALFARO: Are we ready to go back on the
14 record?

15 THE REPORTER: Yes. Go ahead.

16 MS. ALFARO: Mr. Carmona, I remind you that
17 you're under the same oath as this morning, and I'm
18 going to pass the witness right now.

19 THE WITNESS: Okay. Yes.

20 MR. HODGES: Thank you, Ms. Alfaro.

21 EXAMINATION

22 BY MR. HODGES:

23 Q. Mr. Carmona, I just have a couple of follow-up
24 questions, and then likely, after my follow-up
25 questions, Ms. Alfaro may have just some brief follow-up

1 questions to go over what you responded from there.

2 So first, I just want to ask, in regards to
3 your commission sales reports, when did you normally
4 receive those reports?

5 A. Monthly.

6 Q. And can you explain the details of those
7 reports as to the time frame that it covered?

8 A. So the reports were ran monthly, and they were
9 based off when we got paid by our customers. So they
10 were not off what I sold. They were based off what we
11 had already gotten paid, meaning Kilgore had collected
12 the check from their bank, and that was run and the
13 statement.

14 Q. And when you received those statements, did you
15 also receive a commission check or a bonus check
16 supplemented with that report?

17 A. No. That would -- that was some -- that was a
18 good question. I would get the statement, and then it
19 would take weeks, which was another part of my
20 frustration. Mine would take weeks, if not sometimes
21 months, after the other guys got theirs.

22 Q. And how would you know that the other guys
23 received theirs?

24 A. Because we would ask each other, did you get
25 paid on your statement, did you even get your statement.

1 Q. And so --

2 A. There was times where, you know, it was -- it
3 was obviously visible he had got his check, and I hadn't
4 got mine.

5 Q. Do you remember specifically what times, you
6 know, years, maybe months when that occurred?

7 A. Yeah. It was specifically in '16 where that
8 payout took actually from -- the statement was in '16 of
9 December, and I didn't get paid actually till February
10 of '17 for that one.

11 Q. And if it was December -- or the statement was
12 given out, when was it expected that you would receive a
13 payment? Is there a time frame in your contract, or was
14 there a customary time in which you should be receiving
15 a payment?

16 A. It was typically customary that you would get
17 paid on the following pay period, which was the
18 following week.

19 Q. And is that spelled out anywhere, or is that
20 just kind of, like you said, customary within the
21 organization?

22 A. It was just customary. That's why that would
23 begin the -- the frustration of battles and arguments.

24 Q. How did you receive those commission reports?
25 Was it via email? Was it hard copy documents that are

1 given to you?

2 A. Email.

3 Q. And who were those emails sent from? Was that
4 from Paul?

5 A. From Paul, yes.

6 Q. Okay. And, then, you also mentioned that there
7 were delays in payment for statements that were over
8 20k?

9 A. Yes.

10 Q. And I think you mentioned that you couldn't
11 recall, you know, specific instances in which, you know,
12 those that were payment -- were paid, but do you
13 remember at this time as to when?

14 A. Yeah. And then -- and then, actually, December
15 of '18, that's kind of around when the argument
16 happened. Around the time I got Bell's palsy, I was
17 specifically asking for my statement, which sparked the
18 argument, which sparked the HR meeting.

19 Q. Okay. And so I'm going to pull up a document
20 that is going to be labeled Plaintiff's Exhibit 1. Let
21 me share my screen with you.

22 (Deposition Exhibit 1 was marked.)

23 Q. (BY MS. ALFARO) Can you see this email? Do
24 you need to zoom in?

25 A. I can see it, yes.

1 MS. ALFARO: Can you please zoom it in so
2 that I can see the entire email?

3 MR. HODGES: What? Zoom out so you can see
4 the entire email or -- because the email that we're
5 going to look at is right here. This is Carmona 0001,
6 and it's just the top of this where it's forwarded
7 information. But this is going to be what we're looking
8 at.

9 MS. ALFARO: Got it.

10 Q. (BY MR. HODGES) So, Mr. Carmona, can you see
11 this email?

12 A. Yes. Yes, I can.

13 Q. Do you remember -- can you tell me the date
14 this email was received?

15 A. Yes, November 9, 2020.

16 Q. And did you receive this email?

17 A. Yes.

18 Q. And who was it from?

19 A. Paul Therriault.

20 Q. And again, who is Paul Therriault?

21 A. He is my supervisor.

22 Q. Okay. And can you just briefly read the email
23 right here?

24 A. Yes. "Hey, Rudy, I'm not sure if you still use
25 this personal email address that I had on file, but I

1 just wanted to let you know that I finished out your
2 October sales reports and delivered copies to Jeff and
3 Jim" -- Jim -- well, let me finish reading -- "to Jim to
4 see if they are willing to disburse anything
5 posttermination. If you have any questions, you might
6 contact Jim Perkins, the HR director."

7 Q. Okay. Well, let's go through this a little
8 bit. So in regards to the October sales report, what is
9 that?

10 A. He's -- he's basically running the report for
11 the last month I was employed there.

12 Q. And up until that time, was there any other
13 outstanding sales reports that were not paid?

14 A. I think -- I think I did not get my September
15 either, yeah.

16 Q. You say that you were not paid, or did you not
17 receive the actual sales report?

18 A. I did not get that. So typically -- typically,
19 the month lags behind, meaning you can't actually run
20 the report in the actual month. So if I was fired on
21 October, typically, the September statement's given at
22 the end of October, right? So I didn't get the
23 September report either.

24 Q. Okay. And so when he says he delivered copies
25 to Jeff and Jim, did you receive a copy?

1 A. No.

2 Q. And where it states in the email that if they
3 are willing to disburse anything, can you explain what
4 you believe that to mean?

5 A. It means they were going to want to decide if
6 they wanted to pay me or not, but obviously, by
7 disbursing, meaning he's acknowledging that there's
8 money.

9 Q. And was it your understanding that this
10 commission or money was discretionary?

11 A. No. It was ultimately not discretionary based
12 off how I performed.

13 Q. So was this something that was earned prior to
14 your termination?

15 A. Yes.

16 Q. Do you know if Kilgore has any rules or
17 procedures in regards to paying employees after
18 termination or after their employment ended?

19 A. No. There's no rules. I've heard of them
20 paying people, and I've heard of them not paying people.
21 But there's nothing in the employee handbook.

22 Q. And so, when you mentioned earlier 160,000, was
23 that your estimate or guess as to the October sales
24 report?

25 A. Yes. That's my guesstimate based on mostly

1 everything being closed except for the lab job for
2 Halliburton. The moment I was getting terminated was
3 the moment I was getting the POs. So I have no --

4 Q. When you say -- oh, go ahead.

5 A. So I have no recollection how that job went
6 because I didn't oversee it, but I'm the one that sold
7 it.

8 Q. Okay. And so, when you say you received the
9 POs, is that part of the procedures that, you know --
10 actually, scratch that.

11 Can you kind of explain the procedures of
12 once, you know, you receive a PO, leading up to that
13 turning into a commission?

14 A. So the POs is just the notice to proceed with
15 the projects after everything's estimated and quoted.
16 So we get the PO from either a GC or an end user, like
17 Halliburton, saying here's your notice to proceed,
18 here's the official document and PO, and, then, that's
19 how we proceed at a project. But we get paid after the
20 project is completed and paid for.

21 Q. Okay. And so, for the last project that you
22 said you received a PO for, did you complete the work or
23 estimates for that specific client?

24 A. I -- I estimated it. I sold it. I did not get
25 to project manage it because the job was barely about to

1 start, but I sold it. And I was the only reason we got
2 the job because D.E. Harvey's relationship with Kilgore
3 is very bad. They do not like Kilgore.

4 D.E. Harvey is one of the biggest general
5 contractors in Houston. They do all the downtown work,
6 all the Halliburton work, all the FMC work, all the
7 large oil and gas companies. They pretty much do
8 90 percent of all the downtown building high rises.

9 Q. And did you having to project manage certain
10 projects or be in that role on certain projects, was
11 that the primary reason of why you received these
12 commission bonuses?

13 A. No. It was -- it was apart from all three,
14 right? I sold them at a -- I sold them correctly, at a
15 correct margin, to make -- make money for the company
16 and me.

17 Then I estimated them correctly, and I
18 project managed them correctly, meaning I managed the
19 manpower correctly. I managed the equipment costs, the
20 material costs, the scheduling. I mean, it's very
21 essential to schedule these projects correctly so that
22 they come in at budget or under budget, and I was very
23 well-known to bring these projects in under budget to
24 make more money for me and the company.

25 Q. And so you said the project in which you

1 received the PO on the same day as you were terminated,
2 that was Halliburton. Is that correct?

3 A. Well, it was actually the -- it was the PO --
4 it was for D.E. Harvey.

5 Q. D.E. Harvey. Okay.

6 A. But it was Halliburton's site.

7 Q. Gotcha. And do you know if that project was
8 ever completed?

9 A. Yes, it was completed.

10 Q. And how do you know that?

11 A. Because I still talk to Halliburton. They're
12 my customer.

13 Q. Okay. And so do you believe that you -- you
14 were owed commission on that project specifically?

15 A. Yes, because I know specifically from
16 D.E. Harvey and Halliburton people, they did not want to
17 give it to Kilgore. The relationship was me. So
18 that -- that entire project is -- specifically, key
19 component is me.

20 Q. And do you know the estimate time as to how
21 long that project would take to get completed?

22 A. I think that project took about three months.

23 Q. And so after the three months, the project's
24 completed. Kilgore would have been paid in full, and at
25 that time, there should have been some type of

1 commission for you. Is that your understanding?

2 A. Yes.

3 Q. Okay. And so that's -- that and September and
4 October sales reports, does that in sum equal the
5 160,000 which you were referring to during the
6 deposition?

7 A. No, because the October would not show the lab
8 job.

9 Q. Well, yes. So what I'm saying is that the last
10 job, plus the October report and the September report,
11 is that -- is that --

12 A. Yes, yes.

13 Q. -- that 160, or is it only 160 for the October
14 report and the September report?

15 A. No. It's for all three, September, October and
16 the lab job.

17 Q. Okay. And you believe that -- you stated that
18 the -- you believe -- well, you know that the
19 Halliburton -- or that project was completed?

20 A. Yes, sir.

21 Q. And do you know if Halliburton paid in full?

22 A. Yes.

23 Q. And how do you know that?

24 A. I mean, I -- I was told by -- I was told that
25 the job was complete.

1 Q. Okay. But earlier in the deposition, you
2 mentioned -- you said that you wanted to elaborate on
3 what you were mentioning in regards to the sales quotas
4 and that yours was different and that that was racist.
5 And so I just wanted to give you an opportunity to
6 elaborate, or is there any, you know, further testimony
7 that you wanted to give in regards to your testimony
8 that you believe that it was racist for them to
9 manipulate your sales quota compared to --

10 A. Yes, yes. So two things with the increasing my
11 sales quota. One, he's trying to prove that I cannot
12 meet my quota to ownership, but my frustration was me
13 and Steve Saitas started March of 18, 2013. Why is my
14 quota constantly increased by hundreds of thousands of
15 dollars and Steve is not? We started on the same day.
16 We have the same responsibilities.

17 You're just trying to make it look like I
18 can't do my job rather than reward the guy that has
19 actually held the department up financially for seven
20 years. You want to make me look like I'm not doing my
21 job. But, of course, I always -- I always maintain my
22 quota easily.

23 Q. And when you're referring to, you know, the
24 person, you're referring to -- is that Paul you're
25 referring to?

1 A. Yes.

2 Q. Okay. And how often or how many times did your
3 sales quota change during your employment?

4 A. It would change yearly, but it started to
5 change drastically when the frustration began in 2016.
6 I think, as an example -- now, I know my quota got up to
7 about, I think, 2 million, and I think Steve was still
8 at, like, 1.5.

9 Q. So you said that your quota would change each
10 year, correct?

11 A. Yes.

12 Q. Did you have to sign any forms or documents
13 that says, hey, this is your new quota for the year?

14 A. No. It was just presented in an email that
15 this was my new quota.

16 Q. So you didn't have any say or, you know,
17 agreeance to that?

18 A. No. I didn't -- I didn't agree to it. I was
19 just told this is what my new quota was.

20 Q. Do you know if -- was there a sales agreement
21 in place or an agreement in place when you first signed
22 up?

23 A. Yes. There was a -- there was a sales plan
24 presented to me as to if I sold this much at this
25 percentage, this would be my -- my commission.

1 Q. And so can you just kind of explain -- can you
2 explain the difference between your salary and kind of
3 the quotas and kind of -- if there's a difference there
4 or if there's something that can be explained.

5 A. Well, basically, if I -- if I sold a million
6 dollars, I had to cover my salary of 60,000 based off --
7 based off the plan. So in the first year, say, for
8 example -- say, for example, I sold a \$20,000 job and
9 there was cost of \$10,000 with overhead, there was
10 \$10,000 profit. I would get 5,000. That was the way it
11 started.

12 Now, it changed several times, and towards
13 the end, if I sold -- if I sold \$20,000 at 50 percent
14 with \$10,000 cost, instead of 5,000, I got 2,000.

15 And then it went from 50 percent to
16 20 percent. That's a drastic change for somebody who
17 tore the ceiling open when they were used to 1.2 and was
18 doing 3 and 4 million, so --

19 MR. HODGES: I want to pull up another --
20 and this is going to be Plaintiff's Exhibit 2. This is
21 Bates labeled Carmona 0008.

22 (Deposition Exhibit 2 was marked.)

23 Q. (BY MR. HODGES) Can you see this, Mr. Carmona?

24 A. Yeah.

25 Q. All right. And can you explain what this is?

1 A. This is the exact spreadsheet I was talking
2 about. This is the -- this is the Halliburton job, and
3 this is the agreement, T&M, maintenance. If you sell a
4 job over 200,000, I am expected to do 17 to 20 percent
5 profit. Now, if you can see the highlight.

6 Q. Mr. Carmona, I think you may have froze.

7 MS. ALFARO: While he's frozen, I'm going
8 to object to this exhibit because it doesn't seem to be
9 complete. It's an incomplete document.

10 MR. HODGES: And I was assuming that you
11 probably would have the complete documents or as many
12 documents that were sent over.

13 MS. ALFARO: Can you scroll down so that I
14 can look at it?

15 MR. HODGES: Oh, sorry.

16 MS. ALFARO: Yeah. Okay. Thank you. My
17 objection still remains the same, and there's no way of
18 identifying when this was created, by whom or when or
19 whatnot.

20 THE REPORTER: He dropped off, so I'll just
21 go off the record till he comes back on.

22 MS. ALFARO: Okay.

23 (A recess was taken.)

24 MR. HODGES: All right. Reporter, can we
25 get back on the record?

1 THE REPORTER: Okay.

2 MR. HODGES: We're back on?

3 THE REPORTER: Yeah.

4 Q. (BY MR. HODGES) So, Mr. Carmona, do you see
5 this document here?

6 A. Yes. Yes, sir.

7 Q. Okay. And can you explain or -- you know, who
8 created this document?

9 A. Paul created this document.

10 Q. And how do you know Paul created this document?

11 A. Because it was sent from his email.

12 Q. And so was this document in an attachment to an
13 email from Paul?

14 A. Yes.

15 Q. Do you remember when this document was sent,
16 maybe a date or a specific month as to when this
17 documented was attached and emailed?

18 A. Yes. It was sent end of November of 2016.

19 Q. And do you by chance have a copy of that email?

20 A. Yes, I -- yes.

21 Q. And have you produced that email?

22 A. Yes. I think I've produced -- I've sent it to
23 y'all. That's why y'all have this.

24 Q. And so was this document altered in any way
25 once -- from what you received?

1 A. Yes. He doctored the percentages on the right
2 side.

3 Q. No, not in regards to what Paul did. I'm
4 asking you, so as here, as this is the document here,
5 did you do anything to this document from what Paul sent
6 you?

7 A. No.

8 Q. So is this in the same format as from what you
9 received --

10 A. Yes.

11 Q. -- from Paul?

12 A. Yes.

13 MS. ALFARO: I'm going to reiterate my
14 objections to the document. This document presented as
15 Exhibit 2 is incomplete, and there's no way of verifying
16 the same as it stands right now and is attempted to be
17 included in the deposition.

18 Q. (BY MR. HODGES) And, Mr. Carmona, you know,
19 like you said, that document is in an email sent from
20 Paul sometime in 2016. I think he's frozen again.

21 (A recess was taken.)

22 MR. HODGES: Can we go back on the record?

23 THE REPORTER: Back on the record.

24 Q. (BY MR. HODGES) All right. Mr. Carmona, I'm
25 just going to pull up that last exhibit one more time,

1 Plaintiff's Exhibit 2.

2 Mr. Carmona, is this what you consider your
3 sales commission reports that you were referring to
4 throughout this deposition?

5 A. No, no. This is -- this is just a breakdown of
6 one job. The -- I think I emailed the reports.

7 Q. Can you say that again? I'm sorry. I think my
8 audio was out. I didn't get your answer.

9 A. No. This is not what my sales report looks
10 like, no. My sales report is four pages.

11 Q. Okay. And so can you just kind of give me a
12 little more -- what is this?

13 A. This is just a breakdown of one job. So he --
14 this is -- this is what is on our sales plan on the
15 left, and this spreadsheet is something he just copied
16 and pasted and put it on an email on the right.

17 Q. Okay. Going off of this, I said I had, like,
18 two more follow-up questions for you. Thanm, a guy
19 named Thanm, do you know who his supervisor was?

20 MS. ALFARO: Oh, no. I think he's froze.

21 A. Yeah.

22 Q. (BY MR. HODGES) Can you hear me?

23 A. Can you hear me? Yeah, I can hear you. Repeat
24 the question.

25 Q. Yeah. Do you know who Thanm's supervisor was?

1 A. Yes, Paul Therriault.

2 Q. And you mentioned that Thanm was -- had access
3 to direct clients?

4 A. Yes.

5 Q. And you did as well?

6 A. Yes.

7 Q. So y'all both had access to direct clients?

8 A. Yes.

9 MR. HODGES: I have no further questions.
10 I'll pass the witness.

11 THE REPORTER: Anything further for the
12 record?

13 MS. ALFARO: I have no questions at this
14 time.

15 THE REPORTER: Anything further for the
16 record?

17 MS. ALFARO: Not at this time. We
18 reserve -- Eddie, we can't hear you. I know you're
19 talking.

20 MR. HODGES: Can you hear me now?

21 MS. ALFARO: Yeah.

22 MR. HODGES: Yeah. Before we go off the
23 record, I would like to do a read and sign.

24 THE REPORTER: Okay. We're off the record.

25 (End of proceedings at 1:32 p.m.)

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CHANGES AND SIGNATURE

WITNESS NAME: RUDY SAM CARMONA DATE: APRIL 8, 2022

PAGE LINE CHANGE REASON

I, RUDY SAM CARMONA, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

RUDY SAM CARMONA

THE STATE OF _____)
COUNTY OF _____)

Before me, _____, on this day personally appeared RUDY SAM CARMONA, known to me (or proved to me under oath or through _____) (description of identity card or other document)) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, _____.

NOTARY PUBLIC IN AND FOR
THE STATE OF _____
COMMISSION EXPIRES: _____

1 STATE OF TEXAS X

2 COUNTY OF DALLAS X

3 I, LISA M. DURHAM, Certified Shorthand Reporter
4 duly commissioned and qualified in and for the State of
5 Texas, do hereby certify that there came before me on
6 April 8, 2022, at the location of the witness in the
7 City of Porter, County of Montgomery, and State of
8 Texas, the following named person, to wit: RUDY SAM
9 CARMONA, who was duly sworn to testify the truth, the
10 whole truth and nothing but the truth of his knowledge
11 touching and concerning the matters in controversy in
12 this cause; that he was thereupon examined upon his oath
13 and his examination reduced to typewriting under my
14 supervision; that the deposition is a true record of the
15 testimony given by the witness and that signature of the
16 witness, pursuant to Federal Rules of Civil Procedure
17 Rule 30(e)(1)(A) and (B), as well as Rule 30(e)(2):

18 XXXXXX was requested by the deponent and/or a party
19 before completion of the deposition.

20 _____ was not requested by the deponent and/or a
21 party before the completion of the deposition;

22 And that the amount of time used by each party at
23 the deposition is as follows:

24 MS. ALFARO: 03:27:02

MR. HODGES: 00:00:00

25

1 I further certify that I am neither attorney for,
2 nor related to or employed by, any of the parties to the
3 action in which this deposition is taken, and further
4 that I am not a relative or employee of any attorney or
5 counsel employed by the parties hereto or financially
6 interested in the action.

7 Given under my hand and seal of office on this the
8 14th day of April, A.D., 2022.

9
10
11
12 

13 Lisa M. Durham, Texas CSR #6651

14 Veritext Legal Solutions

15 Firm Registration #571

16 300 Throckmorton Street

17 Suite 1600

18 Fort Worth, Texas 76102

19 (817) 336-3042

20 Expiration Date: 01/31/24
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